

LIBRARY
SUPREME COURT, U. S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1964

No. 69

RONALD L. FREEDMAN, APPELLANT,

vs.

MARYLAND.

APPEAL FROM THE COURT OF APPEALS OF MARYLAND.

FILED MAY 8, 1964

PROBABLE JURISDICTION NOTED JUNE 22, 1964

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 69

RONALD L. FREEDMAN, APPELLANT,

vs.

MARYLAND.

APPEAL FROM THE COURT OF APPEALS OF MARYLAND

INDEX

	Original	Print
Record from the Criminal Court of Baltimore, Maryland		
Indictment	A	1
Transcript of proceedings, March 18, 1963, and March 19, 1963	2	4
Appearances	2	4
Offer in evidence—Stipulation by the State and Counsel for defendant—Exhibit No. 1	4	5
Testimony of Miss Eva M. Holland—		
direct	6	6
cross	9	8
redirect	16	12
State rests	18	13
Motion for a judgment or a verdict of acquittal and denial thereof	18	13
Offer in evidence	18	13
Testimony of Ronald L. Freedman—		
direct	19	13
cross	25	17
redirect	26	17
Elwood L. Gebhart—		
direct	33	21
Offers in evidence	35	22

Record from the Criminal Court of Baltimore,

Maryland—Continued

Transcript of proceedings, March 18, 1963, and

March 19, 1963—Continued

Testimony of Norman Mason—

direct	39	24
Mrs. Louis E. Shecter—		
direct	76	43
Offer in evidence	94	52
Both sides rest	95	53
Motion for judgment of acquittal	96	53
State's Exhibit No. 1-A—License Agreement of Times Film Corporation with Rex Thea- tre	98	55
Defendant's Exhibit No. 1—Rules adopted by the Maryland State Board of Motion Picture Censors	100	57
Defendant's Exhibit No. 5—Forty-Fourth An- nual Report, Maryland State Board of Mo- tion Picture Censors, 1959-1960 (excerpts) ..	103	60
Defendant's Exhibit No. 4—Forty-Fifth An- nual Report, Maryland State Board of Mo- tion Picture Censors, 1960-1961 (excerpts) ..	108	65
Defendant's Exhibit No. 3—Forty-Sixth An- nual Report of the Motion Picture Censor Board, Maryland, Fiscal Year 1962 (ex- cerpts)	113	70
Transcript of proceedings, May 24, 1963	116	74
Denial of motion for judgment of acquittal ..	117	74
Sentence	117	74
Docket entries (excerpts)—Judgment and sen- tence	118	75
Opinion, Sedaro, J.	119	75
Clerk's certificate (omitted in printing)	122	77
Proceedings in the Court of Appeals of Maryland ..	123	78
Opinion, Sybert, J.	123	78
Mandate	133	85
Notice of appeal to the Supreme Court of the United States	139	87
Order noting probable jurisdiction	142	89

[fol. A]

**IN THE
CRIMINAL COURT OF BALTIMORE, MARYLAND**

STATE OF MARYLAND,

VS.

RONALD L. FREEDMAN.

INDICTMENT—Filed December 18, 1962

State of Maryland,
City of Baltimore, to wit:

The Jurors of the State of Maryland, for the body of the City of Baltimore do on their oath present that Ronald L. Freedman late of said City, on the first day of November, in the year of our Lord nineteen hundred and sixty-two, at the City aforesaid unlawfully did show and exhibit, or cause to be shown and exhibited, at a certain motion picture theatre, there situate to wit; Rex Theatre, York Road and Cold Spring Lane, in said City, a certain motion picture film, to wit, "Revenge at Daybreak", as owner or lessee of said film, without having first submitted for approval and license, by the Maryland State Board of Censors; contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State.

William J. O'Donnell, The State's Attorney for the
City of Baltimore.

[fol. B]

R. E. Whiteford & Felix Bilgrey

2/8/63 Post S.

4273

STATE OF MARYLAND,

VS.

RONALD L. FREEDMAN. B

(W) 29

3/18—Not concluded

3/19—Not concluded & held S.C.

Indictment

(True Bill)

L. A. Schneider, Foreman.

Filed

3/18/63 P NG T C

Sub Curia as to Verdict—Sodaro

5/24/63 G Fined \$25 & Costs

Sodaro, J.

Witnesses

5/24/63

Written opinion by Judge Sodaro filed

Eva M. Holland

Off. Gallagher

Off. Cacano NE

5/24/63

Traverser released on his own recognizance pending an appeal to the Court of Appeals.

A. S.

Violation of Art. 66-A

Sec. 2

O. K. of the Annot Code of Maryland

Copy of Indictment Served

Receipt Filed. PH

Posted to Costs Record

Date 6/25/63 By E. Robinson

Page Number 121

Fine	\$25.00
States Attorney	5.00
Clerk	9.25
Sheriff	23.00
Attorney	5.00
Total	\$67.25

63
2316
166

Ronald L. Freedman
3501 St. Paul St.
Own recog

—100

5/24/63

4
[fol. 2]

IN THE CRIMINAL COURT OF BALTIMORE

— A —
STATE OF MARYLAND

VS.

RONALD FREEDMAN

Indictment #4273/62

—
Transcript of Proceedings—March 18, 1963

Baltimore, Maryland

Before Honorable Anselm Sodaro, J.

APPEARANCES:

Messrs. Robert T. Freeze and Robert Lazzaro, on behalf of the State.

Messrs. Richard Whiteford and Felix J. Bilgrey, on behalf of the Defendant.

—
The Clerk: Ronald Freedman. Ronald Freedman, under Indictment #4273 The State of Maryland charges you with violation of Article 66 A, Section 2. At the time of your arraignment on December 26, 1962 you pleaded not guilty. What is your plea today?

[fol. 3] Mr. Whiteford: Not guilty, court trial.

Mr. Freeze: The Defense wishes to make an opening statement, sir.

Mr. Whiteford: Your Honor, the defendant in court today is Mr. Ronald Freedman. Mr. Freedman is the licensee and the exhibitor of films at the Rex Theatre.

Mr. Freedman is in court today charged with the violation of Article 66 of the Annotated Code of Maryland. This is the Maryland Motion Picture Censorship Act. And the State purports to have the right under this act to restrain the right of Mr. Freedman to exercise his Constitutional freedoms of speech and press. It is the belief of

Mr. Freedman and myself that the Censorship Act is an oppressive act that is unconstitutional under both the Federal and State Constitutions; and, that it should not be enforced. It is our purpose in coming to court today to have a judicial determination as to the invalidity of this act.

I have seated at my right Mr. Felix Bilgrey. Mr. Bilgrey is a member of the Bar of New York City. It has been his privilege over the years to be associated in many motion [fol. 4] picture censorship cases. He has been before our courts in past years, both before the courts in Baltimore City, and the Maryland Court of Appeals.

I would like to move at this time for his admission for the purpose of trying this case with me.

The Court: Very well. Mr. Bilgrey, very happy to grant the motion, very happy to have you here and to take advantage of your talents.

Mr. Bilgrey: Thank you very much, Your Honor. I feel very privileged of being allowed to participate in this action, especially since I feel it involves an important issue of Constitutional law, namely, validity of the censorship of motion pictures in this State. And, I think that the word censorship itself is a word which is so rarely employed, which is so unusual to our form of life, that it gives me double privilege indeed to be able to participate in these proceedings.

The Court: Very glad to have you.

Mr. Bilgrey: Thank you.

OFFER IN EVIDENCE

Mr. Freeze: If Your Honor please, there is a stipulation [fol. 5] by the State and Counsel for the Defendant which we will offer as Exhibit Number 1.

If it please The Court, it is stipulated and agreed by and between Ronald L. Freedman, the defendant, Richard C. Whiteford and Felix Bilgrey, his attorneys, and Robert Freeze, assistant state's attorney of Baltimore City, in the above matter: (1) on or about November 1st, 1962, the motion picture "Revenge at Daybreak" was exhibited at the Rex Theater on York Road, near Cold Spring Lane, in the City of Baltimore. (2) That Ronald Freedman is the

lessee of the Rex Theater and was exhibitor of "Revenge at Daybreak". (3) That the film "Revenge at Daybreak" was exhibited without ever having been submitted for approval for licensing to the Maryland State Board of Censors. (4) That the film "Revenge at Daybreak" has never been submitted for approval and licensing to the Maryland State Board of Censors. (5) That the film "Revenge at Daybreak" is submitted herewith as Agreed Exhibit 1, we will make that exhibit 2, the film is the identical film that was exhibited on or about November 1st, 1962. (6) The Rex [fol. 6] Theater is a commercial movie house, operating in Baltimore City as a business enterprise and admissions were charged to the general public for admission to the theatre when the film Revenge at Daybreak was exhibited. (7) That the film Revenge at Daybreak was licensed for exhibition pursuant to a regular licensing agreement by and between the Times Film Corporation as distributor and Baltimore Film Society Incorporated and Ronald L. Freedman, as Licensees. Attached hereto and incorporated herewith is a copy of the licensing agreement between the aforesaid parties.

We will offer, then, the stipulation and the agreement as State's Exhibit Number 1 and 1 A, if it please The Court, for the record we will offer the film as State's Exhibit Number 2.

(Thereupon the afore-mentioned stipulation and agreement were marked State's Exhibit Number 1 and 1 A; the film was marked State's Exhibit Number 2.)

Miss Eva M. Holland, please.

Thereupon: EVA M. HOLLAND, being a witness of lawful age, having been first duly sworn according to law, was [fol. 7] examined, and testified as follows:

By the Clerk:

Q. State your name and address, please.

A. Mrs. Eva M. Holland, 1802 Wickes Avenue.

Direct examination.

By Mr. Freeze:

Q. Mrs. Holland, with whom are you employed?

A. Maryland State Board of Motion Picture Censors.

Q. And how long have you been employed there?

A. 15 years.

Q. Were you working with the Board on or about November 1st, 1962?

A. Yes, sir.

Q. I direct your attention to that date, would you tell The Court in your own words what if anything unusual happened to you on that date with particular reference to this particular case?

A. Well, I received a call, a telephone call from Mr. Ronald Freedman at the Rex Theater advising the Board that he had a film up there entitled *Revenge at Daybreak*, which he intended to exhibit that day without submitting [fol. 8] to the Board, without submitting the film to the Board for examination and licensing.

Q. And what was the extent of your conversation with Mr. Freedman?

A. I advised Mr. Freedman if he exhibited the film it would be in violation of the law. However, he told me that that was the purpose, that he was challenging the constitutionality of the motion picture censorship.

Q. Now, based on this conversation with Mr. Freedman, what did you then do?

A. I was directed to visit the Rex Theater, which I did that evening, and found that the film was exhibited in its entirety.

Q. And that was the film *Revenge at Daybreak*, is that correct?

A. Yes, sir.

Q. And that is the same film which we have offered here in court today as State's Exhibit Number 2?

A. Yes, sir.

Q. Now, did you have any conversation with Mr. Freedman at the Rex Theater when you viewed the film *Revenge* [fol. 9] at Daybreak?

A. Yes, I did. After the film had been exhibited I talked with Mr. Freedman and gave him a violation order as to the showing the film in violation of the law; and, he accepted the order in the presence of his attorney.

Q. And your records at the Board of Motion Picture Censors then indicate that the film *Revenge at Daybreak* had never been shown to the Board prior to your going there on November the 1st, is that correct?

A. It had never been submitted to the Board prior to my visit to the theater and has never been submitted to the Board for examination and licensing.

Mr. Freeze: Witness with you.

Cross examination.

By Mr. Whiteford:

Q. Miss Holland, how long have you been associated with Maryland State Board of Censors?

A. 15 years.

Q. And in what capacity were you first associated with them?

A. For six years as a member of the Board.

[fol. 10] Q. Those were the first six years?

A. Yes, sir.

Q. And, thereafter in what capacity have you been associated with the Board?

A. As Chief Reviewer.

Q. What are your functions as chief reviewer?

A. Well, to examine all motion picture films that are submitted to the Board for licensing.

Q. Are you familiar with the procedures at the Maryland State Board of Motion Picture Censors?

A. Yes, sir.

Q. Miss Holland, are you familiar with the standards set out in Article 66 A, Section 6, in regard to motion pictures that are submitted to the Board?

Mr. Freeze: Objection.

The Court: Overruled, she can answer. Section what now?

Mr. Whiteford: Article 66 A, Subsection 6.

The Court: 6, all right, overruled.

By Mr. Whiteford:

[fol. 11] Q. Miss Holland, I would like to read from a portion of that Article 66 A, this is sub-section 6B—

Mr. Freeze: The State will again renew its objection, Your Honor.

The Court: Well, let him finish his question and let me see, I will rule on it after he completes his question.

Mr. Whiteford: It reads:

For the purposes of this Article, a motion picture film or view shall be considered to be obscene if, when considered as a whole, its calculated purpose or dominant effect is substantially to arouse sexual desires, and if the probability of this effect is so great as to outweigh whatever other merits the film may possess.

By Mr. Whiteford:

Q. Did the film *Revenge at Daybreak* violate the standard?

The Court: Well, she never saw it, said she never reviewed it.

Mr. Whiteford: She saw the whole film. Her testimony was, sir, at the Rex Theater.

[fol. 12] The Court: Did you see whole film?

Witness: Yes, sir.

Mr. Freeze: We again object to the question.

The Court: Sustained.

Mr. Whiteford: May I ask why, sir?

The Court: No, you may not. My answer would be very simple, I sustain the objection.

By Mr. Whiteford:

Q. Miss Holland, are you familiar—

The Court: You are contesting the Constitutionality of this statute, the question before me is not whether or not this film is obscene or not, as I understand it.

Mr. Whiteford: Your Honor, Mr. Freedman has been charged and I will read from the indictment.

The Court: I know what he has been charged with.

Mr. Whiteford: Without having first submitted for approval and license by the Maryland State Board of Censors a certain motion picture film.

The Court: I sustain the objection.

Mr. Whiteford: It is our position, sir, that this is a two-pronged argument that the State is making that Mr. Freed-[fol. 13] man did not submit for license or approval. I think we are entitled to go into what constitutes approval by the Board, in order to determine whether or not the State can validly bring a criminal charge for failing to submit for approval. I think it is essential for us to know what approval consists of.

The Court: I will sustain the objection.

By Mr. Whiteford:

Q. Miss Holland, are you familiar with Article 66 A, Section C of the Maryland Annotated Code of Maryland, sub-section 6?

A. Yes.

Q. Sub-section C?

A. Yes.

Q. And that section reads as follows:

For the purposes of this Article, a motion picture film or view shall be considered to be of such a character that its exhibition would tend to debase or corrupt morals if its dominant purpose or effect is erotic or pornographic; or if it portrays acts of sexual immorality, lust or lewdness, or if it expressly or impliedly presents such acts as de-[fol. 14] sirable, acceptable or proper patterns of behavior.

Did you find the film *Revenge at Daybreak* to violate the sub-section?

Mr. Freeze: Objection.

The Court: Sustained.

By Mr. Whiteford:

Q. Miss Holland, are you familiar with Article 66 A, sub-section 6 D which reads as follows—

A. Yes. Yes, sir.

Q. For the purposes of this Article, a motion picture film or view shall be considered of such a character that its exhibition would tend to incite to crime if the theme or the manner of its presentation presents the commission of criminal acts or contempt for law as constituting profitable, desirable, acceptable, respectable or commonly accepted behavior, or if it advocates or teaches the use of, or the methods of use of, narcotics or habit-forming drugs.

Did the film *Revenge at Daybreak* violate this sub-section of the Maryland Code?

[fol. 15] Mr. Freeze: Objection.

The Court: Sustained.

Mr. Whiteford: Your Honor, I would like to proffer at this time, the answer to the three questions that have been asked and in each case would be negative and that Miss Holland's answer, if permitted to answer, would have been no, that the film did not violate any of the standards set forth in this act.

The Court: Very well.

By Mr. Whiteford:

Q. Miss Holland, if a film were submitted to the Maryland State Board of Censors, and a license fee were not tendered with that film, would or would not the film be reviewed?

Mr. Freeze: Objection.

The Court: Let her answer. Overruled.

A. I beg your pardon, would it or would it not be reviewed?

By Mr. Whiteford:

Q. Yes.

A. No, because it sets forth in the law that the applicant has to be, the application has to be, it is set forth in the [fol. 16] law that the application must be applied for and it must be paid for before it is examined.

Q. It is correct, then, is it not, that if a film were submitted and the fee set out in the law were not tendered

with the film that it would not be possible to secure a censor's seal for that particular film?

A. No, sir, not the way that the law is set forth at the present time.

The Court: You said you are not a member of the Board?

Witness: I am not a member of the Board.

By Mr. Whiteford:

Q. Miss Holland, do you ever vote as a member of the Board in your present capacity?

A. No, sir, films are licensed by the Board members.

Mr. Whiteford: That is all I have, sir.

Redirect examination.

By Mr. Freeze:

Q. Miss Holland, after reviewing the film at the Rex Theater, you then took out a warrant, is that correct?

A. That is correct, sir.

[fol. 17] Q. And you were instructed to do so by members of the Board?

A. By the chairman; yes, sir.

Q. Where did you obtain that warrant?

A. At the Northeastern.

Q. Police station?

A. Yes, sir.

Q. And a warrant was signed for the arrest of the defendant here Ronald L. Freedman, is that correct?

A. Yes, sir.

Q. When you issued a violation notice to Mr. Ronald Freedman for not submitting the film to the Board, this was on instructions of the Board, is that not correct?

A. That is right, by direction of the Board.

Mr. Freeze: I have no further questions.

Mr. Whiteford: No questions.

The Court: Step down, please.

Mr. Freeze: Your Honor, there is an additional stipulation between the State and counsel for the Defendant that Officer Peter J. Cacano if in court today would testify

that he served the warrant from Northeastern Police Station on Mr. Freedman; and, at that time there was a service of the warrant and that would be his only testimony here in court today.

STATE RESTS

With that the State will rest, Your Honor.
The Court: The Defense?

MOTION FOR A JUDGMENT OR A VERDICT OF ACQUITTAL AND DENIAL THEREOF

Mr. Whiteford: Your Honor, I would like to move at this time for a judgment or a verdict of acquittal.

The Court: Very well, your motion is denied. Your motion is denied.

OFFER IN EVIDENCE

Mr. Whiteford: All right. Your Honor, I would like to offer into evidence the rules of the Maryland State Board of Motion Picture Censors as they appear in the publication issued by the Maryland State Board of, Maryland State Board of Censors; and, they can be found on pages 11, 12 and 13 of that publication.

The Court: Very well, have it marked as a Defendant's exhibit.

Mr. Freeze: We will object to that, Your Honor, for the record.

The Court: Well, for the record, I will overrule the [fol. 19] objection.

(Thereupon the afore-mentioned rules were then marked Defendant's Exhibit Number 1)

Mr. Whiteford: Mr. Freedman.

Thereupon: RONALD L. FREEDMAN, the defendant, being of lawful age, having been first duly sworn according to law, was examined, and testified as follows:

By the Clerk:

Q. State your name and address, please.

A. Ronald L. Freedman, 3501 St. Paul Street.

Direct examination.

By Mr. Whiteford:

Q. Mr. Freedman, how old are you?

A. 30.

Q. Are you a graduate from any college?

A. Yes.

Q. What school and what degree?

A. University of Maryland, Bachelor of Arts.

Q. Before going into the motion picture exhibiting business what positions have you held?

A. In the movie business?

Q. Outside of the movie business?

A. I was a public school teacher for five years.

Q. How long have you been associated in the motion picture business as such?

A. In various capacities, since the age of 16 starting as an usher and various other sundry jobs in the exhibition end of motion picture business.

Q. And you are now the lessee of the Rex Theater, is that true?

A. Yes.

Q. Located here in Baltimore City?

A. Yes.

Q. And as lessee of the Rex Theater are you also the manager of the theater?

A. Yes.

Q. Did you cause to be exhibited on November the 2nd, 1962 the film *Revenge at Daybreak*?

A. Yes.

Q. Did that film have any censor seal on it when exhibited?

A. No.

Q. Was the film ever submitted to the Maryland State Board of Censors before exhibiting?

A. No.

Q. Why not?

A. The act of exhibiting the film without a censors seal was an attempt on my part to challenge the constitutionality of the Maryland Censorship statute.

Q. Mr. Freedman, previous to exhibiting the film *Revenge at Daybreak*, had you had a series of disputes with the Maryland State Board of Censors?

A. Yes.

Q. And as a result of one of those disputes did you in fact take an appeal through the Civil courts involving the film *The Lovers*?

A. Yes.

Q. Why don't you choose a similar route to appeal decisions you thought were arbitrary of the censor board on subsequent films?

[fol. 22] A. Well, as a practical matter, an appeal on individual films is somewhat useless. The Board has very wide discretionary powers to cut or ban films and for an individual to appeal it takes a great deal of time, a great deal of money. It is a burdensome and onerous process; and, ultimately if you achieve a victory in the courts, as I did with *The Lovers*, and the censor board is reversed, it has no bearing on similar or identical films in that the Board is not compelled to follow court precedent.

Q. Mr. Freedman, have you ever attempted to submit a film to the Maryland State Board of Censors without tendering the required license fee?

A. Will you repeat that question, please?

Q. Have you ever submitted or attempted to submit to the Maryland State Board of Censors a motion picture for review without tendering the license fee?

A. Yes.

Q. What was the result of that attempt?

Mr. Freeze: Objection, unless it is to this particular case.

The Court: Overruled, let him answer.

[fol. 23] A. Yes.

By Mr. Whiteford:

Q. What was the result of that attempt?

A. The result was a refusal to review the film because I had not paid the license fee.

By the Court:

Q. What is the amount of the license fee, Mr. Freedman?

A. It is according to the measurement of the film, the longer the film the more the license fee. It is in the statute the exact—

Mr. Whiteford: It is sub-section 11.

The Court: Well, just want to get some idea generally; and, in an ordinary film just what it would be, what the range would be.

Witness: The average cost for 90 minutes film would be around \$30.

By Mr. Whiteford:

Q. Have, in the past, you yourself paid these fees when submitting films to the censor board?

A. Yes.

[fol. 24] Q. You paid no such fee for *Revenge at Daybreak*, I take it?

A. Yes.

Q. You mean yes that you did not pay the fee?

A. Yes, I did not pay the fee.

Q. Mr. Freedman, to your knowledge had this film *Revenge at Daybreak* ever been submitted to the Board by anyone other than yourself?

A. To my knowledge it had not.

Q. From whom did you get the print?

A. Times Film Corporation.

Q. What City do they operate from?

A. New York.

Q. Did you sign a contract or a leasing-licensing arrangement with them?

A. Yes, sir, I did.

Q. Handing you a piece of paper and ask you, if you will identify it, please?

A. Yes, this is the contract for licensing of the film *Revenge at Daybreak* at the Rex Theater in Baltimore.

[fol. 25] Mr. Freeze: This is the contract that has previously been submitted into evidence as a stipulated exhibit.

Mr. Whiteford: Thank you, that is all I have.

Cross examination.

By Mr. Freeze:

Q. Mr. Freedman, in this case, then, you submitted, you told the motion picture representative of the motion picture board that you were not submitting the film *Revenge at Daybreak* and that you planned to show it without submitting the film for license, is that not correct?

A. Yes, that is correct.

Q. And, as a result of that conversation you actually did show the film on November 1st, without ever having submitted it to the board for approval or license?

A. Yes, that is correct.

Mr. Freeze: No further questions.

By the Court:

Q. Did you make any special advertising to the public that you were exhibiting a picture that had not been approved by the Board of Censors?

A. I advertised the picture as an attraction with no mention of the censorship issue.

Q. Just like any other film?

A. Yes, sir.

The Court: Very well, anything else, Mr. Whiteford?

Redirect examination.

By Mr. Whiteford:

Q. Mr. Freedman, I show you a page from the News-Post, the Baltimore News-Post dated November 1st, 1962, and point out to you a particular advertisement in the paper, can you identify that?

A. Yes, that is an advertisement for the motion picture *Revenge at Daybreak* which showed at the Rex Theater.

Mr. Whiteford: Your Honor, I would like to have this marked as a defendant's exhibit.

The Court: Well, have it marked.

Mr. Whiteford: Lost track of numbers.

The Clerk: Number 2.

[fol. 27] (Thereupon the afore-mentioned advertisement was then marked Defendant's Exhibit Number 2.)

Mr. Whiteford: I have no further questions.

The Court: Anything else, gentlemen?

Mr. Whiteford: Your Honor, at this time we would request that the Court adjourn to suitable quarters to review the film *Revenge at Daybreak*. And, Your Honor, before you rule on this matter there is something we would like to point out to you, and that is that the Supreme Court recently held in the question of this nature that it is important for the record to have a full dress argument and briefing of all the facts and circumstances involved.

I think Your Honor knows that the subject of censorship is a very touchy one and that it has been in the courts in connection with works of literature and, more specifically, with motion pictures, for the past several decades.

I think that the courts are generally agreed that if a censorship statute, such as this, is valid at all, which is highly doubtful to begin with, that it is only valid if the [fol. 28] statute is construed and applied in an extremely limited manner. Since the defendant in this case was charged not only for failure to obtain a license, but also for failure to obtain the advance approval of the contents of the film, and since this statute was therefore very much construed and applied to him, I think the film itself, which is an exhibit here, becomes very important. And, I think that in view of the law on the subject, and there is a Maryland case which I respectfully like to call the Court's attention to, it is 340, cited in 340 US 268, the case of *Nemoto against Maryland* involving—

The Court: 340 US?

Mr. Whiteford: On page 268, Your Honor, involving very similar facts and circumstances, the only difference being that there was a speech involved there and not a motion picture, rather not a speech in the form of a motion picture, but a speech in the form of a public address. And the Supreme Court there—and, indeed, the whole court considered the nature of the speech, and I believe that if, in view of this and the other citation that I mentioned [fol. 29] before, which is the case of *Manuel Enterprises versus Day*, that is cited in Volume 370 United States reports, at page 480, in which the Supreme Court held that it is very important to preserve the records and to have all the facts and circumstances before the court. I think it is crucial at this time that the full film be looked at.

The Court: Well, picture *Revenge at Daybreak* sounds like a picture I would like to look at.

Mr. Whiteford: I am afraid that we are one day late with the film, Your Honor, because subject matter of the film is the Irish Revolution. But, we would be very happy to show it to Your Honor.

The Court: May I ask this, is the State contending that this picture is obscene or that the Board would not have approved it had it been submitted to them for review?

Mr. Freeze: The State is not so contending, Your Honor.

Mr. Whiteford: Well, I don't think, Your Honor—

The Court: Although I would love to see this picture, [fol. 30] if the point isn't raised that this picture is obscene, is there any point in my viewing this picture?

Mr. Whiteford: Well, I think it is important for two reasons, Your Honor. In the first place, I think it is important for the preservation of the record of this court.

The Court: Very well, I am perfectly willing to enjoy reviewing it, but I am just wondering when that could be done. It takes about, how long a picture is it?

Mr. Whiteford: It is about, it is a little over an hour, Your Honor.

The Court: A little over an hour.

Mr. Bilgrey: I think it is important for another reason, Your Honor.

The Court: I will be very happy to review it, have to set up the cameras in chambers, would we, where could I watch

this picture? I am just wondering in the light of the fact that we have other cases in the assignment.

(Off the record discussion.)

The Court: Mr. Bilgrey and Mr. Whiteford, we have one [fol. 31] remaining case in the assignment, in addition to the present case. We can suspend the trial of this case.

[fol. 32]

IN THE CRIMINAL COURT OF BALTIMORE

STATE OF MARYLAND,

—VS.—

RONALD L. FREEDMAN.

Indictment # 4273

Baltimore, Maryland,
March 19, 1963.

Before Honorable Anselm Sodaro, J.

Appearances:

Robert T. Freeze, Esquire on behalf of the State.

Messrs. Richard C. Whiteford and Felix Bilgrey, on behalf of the Defendant.

The Clerk: Ronald Freedman. Mr. Whiteford.

The Court: Very well, gentlemen, The Court is ready.

Mr. Whiteford: Your Honor, I would like to dictate a [fol. 33] notation in the record that yesterday afternoon. The Court, in company with Mr. Freedman, and lawyers on the side of this case, viewed the full length of the film *Revenge at Daybreak* at the theater at the State office building in the premises of the Maryland State Board of Censors.

The Court: Very well.

Mr. Whiteford: Mr. Gebhart, you bring the records, do you have the records? Yes, sir.

Thereupon: ELWOOD L. GEBHART, being a witness of lawful age, having been first duly sworn according to law, was examined, and testified as follows:

By the Clerk:

Q. State your name and assignment, please, sir?

A. My name is Elwood L. Gebhart, Administrative Assistant for the Maryland Censor Board.

Direct examination.

By Mr. Whiteford:

Q. Mr. Gebhart, how long have you been associated with [fol. 34] the Maryland Censor Board?

A. About five years.

Q. Have you been the administrative assistant to the Board during that period of time?

A. I have.

Q. What are the duties of the administrative assistant of the Censor Board?

A. I am in full charge of the office, the fees, paid applications, the fees paid for examining films, deposits to the State treasury, and all administrative matters of the Board.

Q. You have nothing, as such, to do with the actual review of motion pictures, is that correct?

A. That is correct.

Q. And your function merely is that of administrative officer in keeping records and retaining financial records and receipts for the Board?

A. Yes, once in a while we are called, I am called upon to make an inspection, or I have sat in on films and reviewed them, but, of course, all the decisions are made by the Board.

[fol. 35] Q. When you say make inspections, you mean make inspections of theaters?

A. That is correct.

Q. And how often do you do that?

A. Periodically, maybe once a month or maybe once every two months; specific assignments.

Q. In response to a summons issued have you brought with you today the financial records of the Maryland State Board of Censors?

A. I have the state—I have the ledger book for the last three years which you required, and I have the annual reports of the Board for the last three years.

Q. May I see the annual reports?

Mr. Freeze: For the record, Your Honor, I assume Mr. Whiteford is ready to offer the exhibits as an exhibit for the Defense; and, the State will offer an objection to that.

The Court: Well, I will overrule the objection and let's see how far we can go.

OFFERS IN EVIDENCE

Mr. Whiteford: Your Honor, Mr. Gebhart just handed [fol. 36] me the 44th, 45th and 46th Annual Reports of the Maryland State Board of Censors which covers the years 1959, 1960, 1961 and 1962. I would like to offer these in evidence.

Mr. Freeze: The State renews its objection.

The Court: Mr. Whiteford, maybe I am not following this case at all. What is the purpose of burdening the record with the reports of the Board going back to 1959.

Mr. Whiteford: The specific purpose of this proffer, Your Honor, is to show from the annual reports of the Censor Board, that the Censor Board for a period of years has charged fees for censoring motion pictures, that they have shown a profit out of this, and that the one purpose of the Board is a taxing source of the State of Maryland. And that we, of course, are going to maintain that any tax on the freedom of speech or press is unconstitutional.

The Court: Very well, I will admit them.

(Thereupon the above-mentioned reports were then marked Defendant's Exhibit Number 4.)

[fol. 37] By Mr. Whiteford:

Q. Mr. Gebhart, are you personally familiar with any legislation presently pending in our State Legislature in

regard to the Maryland State Board of Censors, and the raising of the fees charged by the Censor Board?

Mr. Freeze: Objection.

The Court: Let him answer, if he knows.

Witness: Yes, I am.

By Mr. Whiteford:

Q. You know the sponsor of that bill?

A. I believe it was introduced by the speaker Mr. Boone.

Q. Do you have a copy of that bill in your records?

A. I don't have it with me, but I have one at the office, it is Bill 423, House Bill.

Q. Would I be correct in saying that the general purpose of House Bill 423 is to raise the level of the fee now charged for the censoring of motion pictures?

[fol. 38] A. The bill is to raise the fee, the licensing of duplicate films of the censor board from a dollar to a dollar and a half.

Q. And is the purpose of the bill to secure more revenue for the Maryland State Board of Censors?

Mr. Freeze: Objection, Your Honor.

The Court: Sustained, the bill ought to speak for itself. I don't know whether it is to raise revenue or to take care of expenses of running this Board. The bill certainly ought to speak for itself. I will sustain the objection. If you have a copy of the bill you may introduce it later in the proceeding.

Mr. Whiteford: I am going to ask Mr. Gebhart to get his copy and produce it. I would prefer to do it that way.

The Court: It doesn't make any difference really. All right.

By Mr. Whiteford:

Q. Mr. Gebhart, can you get a copy of that bill and produce it here in court?

A. Yes, I can.

[fol. 39] Q. I would appreciate it if you would do that for us.

Mr. Whiteford: Your Honor, I have no further questions at this point.

Mr. Freeze: The State has no questions.

The Court: Step down, please.

Mr. Whiteford: Mr. Mason.

Thereupon: NORMAN MASON, being a witness of lawful age, having been first duly sworn according to law, was examined, and testified as follows:

By the Clerk:

Q. Name and assignment, please.

A. My name is Norman Mason, Crisfield, Maryland.

Direct examination.

By Mr. Bilgrey:

Q. Mr. Mason, how long have you been on the Board of Censors?

A. I have been on the Board, it will be four years the 4th day of this coming month of April.

[fol. 40] Q. And is that an appointive position?

A. Yes, sir.

Q. From whom did you get your appointment?

A. From the Governor, sir.

Q. What is your annual compensation?

A. Present time it is \$4500 a year.

Q. And in the Act there is reference made to other compensation for actual and incidental expenses. Do you draw any other incidental expenses, and I am referring now to Section 12 of the Act?

A. I get hotel expenses and so forth.

Q. It states that that is in reference with attending meetings?

A. Yes, sir.

Q. Do you attend any meetings on behalf of the Board of Censors?

A. Yes, sir, we have regular scheduled meetings, the whole Board does, yes, sir.

Q. I see. You meet with other censors outside of the State?

A. I have been to the New York Censor Board, and [fol. 41] I think a fellow by the name of Pauche, possibly you may know him, and just looking over his operation, see if we could improve ours, or anything like that.

Q. I hope you understand, Mr. Mason, we are merely asking these questions because of our contentions in connection with the Constitutional invalidity of the Act; and, that we in no way want to embarrass you by asking these questions.

A. Perfectly all right, I have nothing to hide, sir, not a thing.

Q. Mr. Mason, what are your regular hours of work?

Mr. Freeze: Objection.

By Mr. Bilgrey:

Q. With the Board?

The Court: What is the purpose of that question, Mr. Bilgrey?

Mr. Bilgrey: We want to show Your Honor that Mr. Mason is, as one of the members, regularly looks at motion pictures during regular hours in order to judge, pass on.

[fol. 42] The Court: Well, let him answer. What are your working hours?

Witness: It is impossible to say; for instance, this week I left home about 2:00 o'clock Sunday, and I will be here until Thursday. Some weeks it isn't as busy as others and I will be here just a couple of days. I will say between two and four days a week.

By Mr. Bilgrey:

Q. This is a full time position, then?

A. No, sir. No, sir, between two and four days a week.

Q. You hold any other positions?

A. With the State? I have other businesses home in Crisfield.

Q. I see. You mean you have another commercial position that you are employed with?

The Court: Can't make a living on \$4500 a year, I guess, and you have a business of your own, do you?

Witness: Yes, sir, and I just started getting that a short time.

[fol. 43] The Court: All right.

By Mr. Bilgrey:

Q. Mr. Mason, what was your occupation prior to being with the Censor Board?

A. Since 1935 I have been in the coal and concrete business, also have a little hardware business.

Q. Mr. Mason, does the Board of Censors examine every motion picture which is shown in the State of Maryland, or are there exceptions provided for in the statute?

A. Now, are you talking about the Board members or the reviewers?

Q. I am talking about the reviewers?

A. The reviewers review all pictures that come to the State of Maryland with the exception of news reels.

Q. Well, are you a reviewer?

A. No, sir, I am chairman of the Board.

Q. I see. Do you look at films on your own with the board members?

[fol. 44] A. Sometimes I do, of course, my job is a lot more to it than just reviewing film.

Q. Could you describe your functions briefly other than—

Mr. Freeze: Your Honor, I think we are going very far afield here.

The Court: Well, let's find out what he does. Overruled. What do you do in connection with your duties?

Witness: Well, there is a tremendous amount of paper work is one thing. And, of course, I do look at a lot of the film, but primarily paper work and films, looking at films, is the two main things.

By Mr. Bilgrey:

Q. Mr. Mason, I would like to renew my question about whether the Board views all films that are shown in the State of Maryland; and, let me limit it first to commercial theaters?

A. No, sir, we do not review newsreels, but other than that, yes, we do.

Q. How about features that are shown on television, do you review those?

[fol. 45] A. No, sir, that comes under a different department altogether, sir.

Q. Do you know if it comes under any department?

A. I don't know, I understand it comes under the FCC, I believe it is, the Federal Communications Commission, that is what I understand. I don't know that, no, sir.

Q. You do not review films shown on television?

A. A lot of it originates from California.

The Court: He couldn't possibly do it. He reviews films in commercial theaters, except newsreels.

By Mr. Bilgrey:

Q. What about films shown in Enoch Pratt Public Library, do you censor those?

A. Oh, I don't think so, that is non-commercial.

Q. How about films shown for educational or charitable purposes?

A. Generally speaking we don't, if it is non-commercial.

Q. So that there is an area, then, where films, feature [fol. 46] films can be shown in the State without being submitted to you for censorship?

A. If it is non-commercial I would say yes.

Q. Now, Mr. Mason, Section 3 of the Act states that: The Board shall consist of three residents and citizens of the State of Maryland, well qualified by education and experience to act as censors.

Do you consider yourself well qualified to act?

A. I do, I don't know whether anyone else does, but I do, I guess.

Q. Well, may I ask you what schools you attended, Mr. Mason?

A. High school is all.

Q. You go to college?

A. No, sir.

Q. Did you take any course in literature or in the arts?

A. Just a normal high school education.

Q. Do you know what a classic is?

A. Let's go into details a little more. What do you mean [fol. 47] by what is a classic?

Q. Well, a classic book, for example, would you know what that is?

A. Well, sir, I am primarily interested in motion pictures.

Q. Did you read any of Shakespeare, for example?

A. I have read some, yes, sir.

Q. Would you consider him a classic?

A. I never thought of him that way, but, I mean, I am not qualified to answer that question.

Q. Do you do a lot of reading, Mr. Mason?

A. Quite a bit, sir.

Q. Now, in connection with your judging of films, do you read any of the out of town reviews?

A. Yes, sir.

Q. You read the New York Times?

The Court: Not recently, I guess, not recently.

A. We have publications that come to our office all the time, I read those.

By Mr. Bilgrey:

Q. Do you read the reviews of motion pictures?

[fol. 48] A. Quite often, I do, yes, sir.

Q. Do you consider those reviews in arriving at your decisions as to whether or not to pass films?

A. I would not use the word; we consider it, of course, anything that comes into our office that is helpful, we read it and, then, of course, we use our own judgment, if that is what you mean. I mean, when we review films that has no bearing on the ultimate outcome.

Q. Has no bearing on the ultimate outcome?

A. Not necessarily, no bearing, I will put it that way.

Q. In connection with your function as motion picture censor do you consider whether or not the film has any academic awards or merits?

A. I would say of course we do if it has any merit.

Q. Are you familiar with the Academy Awards?

A. Somewhat.

Q. How about the Foreign Film Festivals?

A. Sir, we have 1354 pictures come across; come in our [fol. 49] office last year and to pinpoint any one picture it is very, very, very difficult.

Q. Now, Mr. Mason, I am going to ask you some questions about the standards in the act. I am referring specifically to Section 6 of Article 66 A of the Annotated Code. Now, subsection A of that Article, of that section, provides that: The Board shall examine or supervise the examination of all films or views to be exhibited or used in the State of Maryland and shall approve and license such films or views which are moral and proper, and shall disapprove such as are obscene, or such as tend, in the judgment of the Board, to debase or corrupt morals or incite to crimes.

May I have your own definition as to what the term moral and proper means?

Mr. Freeze: Objection.

The Court: Sustained. Wouldn't that depend on the film?

Mr. Bilgrey: Your Honor, I knew that Mr. Freeze, my learned brother, was going to object to this, and before [fol. 50] you rule on the objection, in connection with our question, may I be permitted to address myself to The Court?

The Court: Yes.

Mr. Bilgrey: Because I believe that the application of the standards is the crux of this case, and that they should be permitted in.

Now, there are two main reasons, Your Honor, why we believe that these standards should be allowed in, as to

what the various board members do with these standards, how they apply them, how they construe these standards.

The first reason, Your Honor, is connected with the Rules of Evidence. Now, the real test of the admissibility of the evidence is the connection between the fact that we seek here to prove with the offense charged. The question is whether or not we have drawn the standard, the standards used in this law, into issue by Mr. Freedman's failure to submit to the standards.

Now, Your Honor, I would like to cite from several [fol. 51] cases in the Supreme Court and, a Maryland case in support of this proposition that these standards are indeed very much before The Court. The first case I should like to cite from is the case of The Mott Company against Maryland.

The Court: I don't mind hearing your argument, what I am trying to find out is, your question is what is the definition.

Mr. Bilgrey: My question is what is the definition.

The Court: Of what?

Mr. Bilgrey: Of the various standards contained in this—

The Court: Well, wouldn't he have to—I don't know whether Mr. Webster could give you a definition without reviewing his own written definition. I will sustain the objection.

By Mr. Bilgrey:

Q. Well, Mr. Mason, let me ask you this question. Are you familiar with the recent Supreme Court decisions in the past ten years or so rendered in connection with censorship of motion pictures?

A. See, I haven't been on the Board ten years, but I have read most of those decisions.

Q. I see. Have you read the Burston Decision?

A. I can't quite recall. You see, in other words, when we need something like that we have that information in hand, and it isn't necessary to remember it by heart.

Q. Well, Mr. Mason, Section 20-A of Chapter 66A provides that no advertising matter shall be permitted which

is sacrilegious. Are you familiar with the fact that that standard was knocked out in the Burston case by the United States Supreme Court?

A. Yes, sir, I am familiar with that, sir.

Q. Mr. Mason, Section 6 A of the law states that you shall approve and license such films or views which are moral and proper.

Are you familiar with the case of Holmsby against Vaughn which involved the film called The Moon Is Blue in the United States Supreme Court—

Mr. Freeze: Objection, Your Honor.

[fol. 53] The Court: Well, are you or not?

Witness: No, sir.

The Court: He is not.

By Mr. Bilgrey:

Q. Mr. Mason, Section 6 C provides that a film is immoral if its exhibition would tend to debase or corrupt morals, if its dominant purpose or effect is erotic or pornographic. Are you familiar with the decision in the United States Supreme Court involving a film called Lady Chatterley's Lover a few years ago?

Mr. Freeze: Objection.

The Court: Let him answer.

Witness: Yes. Yes, sir, I am familiar with that particular picture.

By Mr. Bilgrey:

Q. You read the case?

A. Yes, sir.

Q. Do you know, then, that this same identical standard has been knocked out and held invalid by the United States Supreme Court?

Mr. Freeze: Objection.

[fol. 54] The Court: Well, do you know that? Overruled. Do you know it or not?

Witness: Sir?

The Court: Do you know that that standard has been knocked out by the Supreme Court decision?

Witness: They permitted that picture.

The Court: Yes. He knows it has been knocked out.

Witness: The Supreme Court permitted that picture to be shown.

By Mr. Bilgrey:

Q. You know the standard has been knocked out?

A. I don't know the legal term, but I know they permitted the picture. Let me put it my way, then I will be able to answer it for you.

Q. You know it involved the same standard, Mr. Mason, having knowledge of the fact that these standards have been knocked out by the United States Supreme Court, have you still continued to employ the use of these same standards in the censoring of films?

A. Sir—

[fol. 55] Mr. Freeze: Objection.

The Court: Well, let him answer. Let him answer.

Witness: Sir, each picture is altogether different. It depends upon the circumstances why certain scenes would be allowed in a picture; and, maybe other circumstances possibly it would not be. I mean, each picture has to go on its own. I mean, in other words, you can't very well take one picture and it has been a guide only to a certain degree.

(Question read)

By Mr. Bilgrey:

Q. Is your answer yes?

A. No, it isn't yes. Each picture has to stand on its own merits, I mean, rarely do you see two pictures, in fact, I have never seen two pictures identically alike; and, certain parts of a picture tends to make it altogether different than other parts in the picture.

Q. I would still like to get an answer yes or no.

The Court: Well, the answer to the question is, Mr. [fol. 56] Mason, as I understand it, knowing these standards have been knocked out by the Supreme Court, do you still use those same standards?

Witness: No.

The Court: The answer is no.

By Mr. Bilgrey:

Q. What standards do you use if you do not use the standards that are contained in Section 6? What standards do you use, that is what we are trying to find out.

A. With each picture depends solely on itself. No way to make a general answer of that particular question.

Q. You use different standards, then, in connection with your judging of every individual film?

A. Any portion of any picture that the Supreme Court has ruled on we try to go by the Supreme Court ruling. I mean, we don't try to overpower those boys, is that what you mean?

Q. I am really not trying to embarrass you.

The Court: Well, ask the question now. He is not embarrassed, I don't think.

[fol. 57] By Mr. Bilgrey:

Q. Merely like to establish what the standards are that are used by the Board since they obviously do not use the standards or you do not use the standards set forth in Section 6?

Mr. Freeze: Objection, Your Honor, that is a characterization not identified with the evidence in the case.

Mr. Bilgrey: Well, he said that.

The Court: Well, start again, let's start again. What is your question?

By Mr. Bilgrey:

Q. Mr. Mason, what standards do you apply to the banning or passing of on particular films?

A. Well, nudity would be one..

Q. You mean you ban every nudist film?

A. Sir, now you are telling me, let me answer the question, if you will, please. Nudity would be one of the reasons. Then, the next thing would be a narcotics picture showing, we will say, putting a needle in a kid's arm, we are very much opposed to that. And there are other things [fol. 58] that we would be opposed to. Now, that doesn't necessarily mean that a nudist camp picture we would ban.

Q. You would not ban a nudist camp film?

A. Generally speaking, no, we would not, generally speaking.

Q. Why not?

A. I think there has been a Court of Appeals ruling, if I remember right, on that particular type picture.

Q. I see. What if it were a very entertaining nudist film?

A. Sir, it would, depends solely on what is in the film. I mean, to answer a question like that is, I just can't do it, I mean, I don't know how to answer it.

Q. On what basis would you ban a nudist film, for example?

A. Well, say, for instance, a man and woman was making love in a nudist camp, we would definitely ban that.

Q. You mean if the film showed the sexual act?

[fol. 59] A. No, sir.

The Court: I didn't hear your question.

By Mr. Bilgrey:

Q. On what basis would you ban a nudist film.

The Court: Oh, my, go ahead.

A. Well, say, in a nudist camp, say if a man and woman were making love, not necessarily a particular act this referred to, but if they were making love, we would consider very strongly of cutting that portion out.

By Mr. Bilgrey:

Q. Suppose it was just an entertaining nudist film that took place outside of a nudist camp, and there was no intimation of any making love?

A. Sir, these questions are very difficult, it would have to depend solely on what the rest of the picture was, it is awfully difficult to answer the questions you are asking.

Q. Let me ask you, Mr. Mason, how do you judge, in arriving at your judgment, the effect of what persons, are you concerned with, are you concerned with the average person, or let me rephrase that question. In arriving [fol. 60] at your decision are you concerned with the effect that a particular film will have on the average person in this State?

A. I would say we consider all the people as a whole, primarily.

Q. That includes children?

A. Definitely.

Q. So that suppose you were to see a film which you think can affect children or juveniles up to the ages of 16 or 17, and you would consider that film unfit for that particular class, would that affect your judgment?

A. I would say it would affect it. Now, what it would do to the ultimate outcome, I couldn't tell you because I don't know, I mean the question that you are asking is very difficult to answer from here and not looking at the picture.

Q. But, you would consider the effect it would have on—

A. On everybody, yes. On all people, yes, sir.

Q. How about feeble-minded persons?

[fol. 61] The Court: Who?

Mr. Bilgrey: The feeble-minded.

The Court: The feeble-minded?

Mr. Bilgrey: Yes, sir.

Witness: We would take those people into consideration.

By Mr. Bilgrey:

Q. Mr. Mason, I assume that seeing all those films has not changed your way of life any?

The Court: Has changed his way of life?

Mr. Bilgrey: Yes, sir.

The Court: That is not a proper question. I will sustain the objection if there is one.

Mr. Freeze: Your Honor, I was about to object again to the whole line of questioning.

The Court: I don't know whether it has changed his way of life, if it has I don't think it is going to make any difference in this case, hypothetical questions not dealing with a film in question, and hypothetical questions, I think we are going far afield.

By Mr. Bilgrey:

[fol. 62] Q. Mr. Mason, in arriving at a decision, do you consider the direction of the film?

A. I don't know what you are—what you mean by direction of the film?

Q. Well, I am trying to find out what elements in a particular film you consider in arriving at your judgment?

A. I just mentioned the fact that nudity would be one, narcotics pictures and so forth and so on, like that, would be.

Q. How about the production values of a particular film?

The Court: The what?

Mr. Bilgrey: The production values.

The Court: I don't know what it means.

Witness: I don't either, sir.

Mr. Bilgrey: The direction, the acting, the photography, the elements that go into the makeup of the motion picture.

Witness: I have seen several films that we have cut and I thought they were overacted, is that what you mean, [fol. 63] if they overact as well as underact we—

By Mr. Bilgrey:

Q. That is what I mean.

A. In nudity particularly, I am thinking about a person can overact on the screen if nudity is involved, as well as underact.

Q. Well, forgetting about the nudity, I am thinking now about the regular run of the mill film.

The Court: What is your question?

A. We pass them.

The Court: I don't understand your question. What is your question? What do you mean by production values, now that may be a technical term in the motion picture industry, but this is a law court, what do you mean by production values. I don't understand it myself.

Witness: I don't either.

Mr. Bilgrey: Your Honor, like to refer to Section 6 of Article 66 A and with the Court's permission I should like to read Section B.

The Court: Very well.

Mr. Bilgrey: It is a very short section; for the purposes of this article, a motion picture film or view shall [fol. 64] be considered to be obscene if, when considered as a whole, its calculated purpose or dominant effect is substantially to arouse sexual desires—

The Court: Yes.

Mr. Bilgrey: —and if the probability of this effect is so great as to outweigh whatever other merits the film may possess.

Now, my questions to Mr. Mason are directed to the evaluation in his mind of the other merits that are stated in this section.

The Court: I still don't understand your question. Can't you make them a little bit more specific, please, because I don't understand your question. If he does he may answer it. I may not understand the answer. I don't understand production values at all.

By Mr. Bilgrey:

Q. Mr. Mason, what do you consider other merits under this sub-section of the statute?

A. Other merits pertaining to what, sir?

Q. Well, the statute says that the arousal of sexual desire [fol. 65] has to be weighed against whatever other merits the film may possess?

A. Sir.

Q. I would like to know what these other merits are in your mind?

A. Sir, that is, each picture has to stand on its own feet, and we would have to look at a picture before I could answer that sensibly, I would say, because don't know in, say the next picture coming into us, what is going to come off next, it depends solely on the picture as to what you, how you classify it.

The Court: Well, that is what the Supreme Court also said, didn't they, if I remember correctly, that a lot of these pictures have to stand or fall on their own bottom, it all depends on the picture. That is true, isn't it?

Mr. Bilgrey: Well, Your Honor, the Supreme Court, I think, has knocked out every single standard.

The Court: Sir?

Mr. Bilgrey: The Supreme Court has knocked out, in [fol. 66] validated every single standard that has been before the Court in connection with the censoring of films.

The Court: All right.

Mr. Bilgrey: And it has established that the State has to make out a great burden, a great over riding interest that exists before it can censor films at all, standards have to be very narrowly drawn.

The Court: I understand.

Mr. Bilgrey: And, I am merely trying to arrive at the manner in which this witness feels, that the—

The Court: Well, you go ahead and ask the questions now.

Mr. Bilgrey: Thank you.

By Mr. Bilgrey:

Q. Well, Mr. Mason, you do see a lot of films and you must have some general rule formulated within your mind what the merits are that you will weigh against anything objectionable that you may see in a specific film?

[fol. 67] A. I think this may be the third time I mentioned this. Nudity is one thing we look for, narcotics pictures about putting the needle in the kid's arms and so forth and so on, and so forth and so on, that is the main things we look for.

Q. You have stated the objectionable elements, how about the redeeming values of a motion picture?

A. Sir, I can't see much redeeming value of showing a little kid how to put a needle in his arm to make him high. I can't see that. I don't think there is a picture could, I won't put it that way, I don't think that many pictures could show where that would be advantageous to a kid. And that is one of the things that we look for, and usually I recommend a cut and usually the Board goes along.

Q. Mr. Mason, are you familiar with the ruling of the Maryland Court of Appeals in the Times Film case and in the case of United Artists which involved the picture called The Man with the Golden Arm?

A. I have read that, but to remember all that is physically impossible for me to do it.

[fol. 68] Q. Well, in the Times Film case that involved a picture called The Naked Amazon, have you read that?

A. Yes, sir, I can't remember it word for word by no means.

Q. Are you familiar with the Court's ruling in that case, the film must be considered as a whole?

A. Yes, I remember that portion, the Supreme Court also said it.

Q. How do you consider your authority to effectuate cuts affected by those decisions, if at all?

The Court: I don't understand this question.

Witness: Those questions are very difficult.

By Mr. Bilgrey:

Q. I am sorry, let me rephrase the question. In view of this ruling do you still effectuate cuts to films, do you still eliminate portions from films?

A. Yes, sir. Yes, sir. We still eliminate portions from films, is that your question?

Q. Yes, sir.

A. Yes, sir.

[fol. 69] Q. In other words, if you felt that a particular scene was unsuitable for children, you would eliminate that scene?

A. Again, I think we are going to have to look at the whole picture and not just take a little spot here and a little spot there. I would rather not answer that question, not knowing about the rest of the picture that you are referring to.

Q. But, you feel that certain films lead to crime?

A. I would say it would help, it could help, put it that way.

Q. Have you any statistics in your office to show that, substantiate that proposition?

A. No, I don't have, I don't think we have any statistics on it.

Q. Mr. Mason, if someone were to submit a film to your office, without tendering the licensing fee, would you look at the film?

A. In other words, if he didn't pay the fee would we look at the film, sir, we couldn't, it is against the law to do [fol. 70] that in the State of Maryland, we couldn't.

Q. Mr. Mason, if a film is banned in whole, or in part, or in parts, your law provides for a review, does it not? Your law provides for a review of the banning?

A. Well, of course, if it is, been cut, naturally we would have had to review it before we would recommend a cut.

Q. Could you tell me briefly in your own words how the reviewing procedure operates?

A. If I understand your question properly, we have two reviewers, Miss Holland being the chief reviewer, and Mr. Vaughn. Those two reviewers look at each and every movie, original movie that comes in the State of Maryland, with the exception of newsreels; and, they, after looking at these pictures, if they see anything they think that possibly may need eliminating then they call the Board in and show it to the Board; the reviewers can recommend a cut, but they can't authorize one. And, then, of course, [fol. 71] we look at it and if we think that is proper we go along, if we don't we do say maybe we think the picture is all right as it is.

Q. Supposing the film is banned or portions have been eliminated from the film—

A. Yes, sir.

Q. —does the owner of the film have a right to request a review from your determination?

A. Yes, sir, that is his next step, yes, sir.

Q. Could you in your own words tell us how the procedure of the reviewing method operates?

A. Well, generally speaking, the person who owns a film will bring in his lawyer, or lawyers; generally speaking, we would ask the assistant that is assigned to us in the Attorney General's office to be with us on that particular picture. And, then, of course, we would look at it, as you would any other picture, and just determine from there, and then we try to get some legal advice from the Attorney General's office, don't try to, we get it; in other words, he has been very cooperative.

[fol. 72] Q. As a general rule, would you say that the same reviewers who have seen the film before look at it again on the appeal?

A. The two reviewers are there at all times, yes, they would, generally speaking, look at it again, yes.

Q. Do they ever change their minds, Mr. Mason?

A. I would not use the word never. I would say that they have minds of their own and we don't try to press them. I mean, in other words, we don't tell them we are going to fire them if they don't do what we say. Is that what you mean, we don't threaten them; yes, sir, quite often they could change their mind.

Q. Mr. Mason, before the original ruling do you ever call in the owner of the film to give evidence or to question him before you make a ruling?

A. Not very often, bear in mind that there is a film going through pretty fast and to call each and every person in and some of them maybe lives in New York, some many miles further than New York, some in Washington [fol. 73] and so forth and so on, it would be very difficult to do that.

Q. In other words, you get most of your prints from out of the State?

A. Oh, yes, 98%, I would say. We get most of our trouble in Baltimore, but get most of our prints out of State, yes.

Q. What happens after you enter your ruling, what do you do with the actual prints, do you return them?

A. Yes, sir, in other words, there is a regular freight company that comes and picks them up.

Q. You send most of those prints back out of the State?

A. Sir, we don't cut any film, the film isn't ours by law; again I say we are not even allowed to touch a film, we recommend a cut, and they have to do their own cutting. I mean, in other words, it is not our film.

Q. I was concerned now mainly with the shipping of the [fol. 74] actual prints?

A. Well, of course, we have nothing whatsoever to do with that. In other words, you can bring it by bus, we have nothing to do at all with that.

Q. Mr. Mason, what about subsequent prints, do you censor prints other than the original print of a film?

A. If a print has an elimination in it we usually ask for the company to send us the particular reel or reels that we have eliminated to see that that has been done in the duplicates.

Q. But there is no requirement that subsequent prints be submitted to your Board with an additional fee, is there?

A. The original picture is \$3.00 per thousand feet or fraction thereof, your duplicate is \$1.00 per thousand or fraction thereof. That same thing would apply if it is to be cut or not to be cut, the price wouldn't change. Is that what you mean?

Q. That was one of the questions I had in mind.

A. Yes, sir. Well, in other words, the price wouldn't [fol. 75] change if it was eliminated or not eliminated.

Q. Mr. Mason, on the review, on the review procedure, I am referring now to the procedure which takes place after you have had a first ruling; and, then, the owner has appealed that, from that ruling, to the Board, do you judge the films by the same standards that you have judged them before?

A. Generally speaking I would say that would be right. Generally speaking, I mean, we are not infallible, I mean, we, if we are shown that maybe we have been a little harsh on the film, we will be glad to entertain anybody's thoughts on it, interest in the picture; anybody's thoughts, interest in the picture.

Q. Do you know, Mr. Mason, how many states have censorship?

A. Yes, sir.

Q. How many?

A. Four, sir, and many, many cities, many cities.

Q. Does Washington have censorship?

[fol. 76] A. No, not to my knowledge.

Q. You think there is a different standard of morality in Washington than there is in Baltimore?

Mr. Freeze: I object.

The Court: Sustained.

Mr. Bilgrey: We have no further questions.

Mr. Freeze: Your Honor, I will again renew my objection to the entire line of testimony of Mr. Mason's questioning and ask that it be stricken from the record.

The Court: Very well. I will deny your motion. Step down, Mr. Mason.

Mr. Whiteford: Miss Shecter.

Thereupon: MRS. LOUIS E. SHECTER, being a witness of lawful age, having been first duly sworn according to law, was examined, and testified as follows:

By the Clerk:

Q. State your name and assignment?

A. Mrs. Louis E. Shecter, Vice-Chairman of the Motion [fol. 77] Picture Censor Board.

Direct examination.

By Mr. Whiteford:

Q. Miss Shecter, where do you live?

A. 3526 Barton Oaks Road.

Q. How long have you been associated with the Maryland State Board of Censors?

A. Two years.

Q. And your official position is vice-chairman?

A. Vice-Chairman.

Q. And have you been vice-chairman ever since you have been associated with the Board?

A. Two years, yes.

Q. For the full two years?

A. Yes.

Q. Your position is an appointive one, is that correct?

A. Appointed by Governor Tawes.

Q. Appointed by Governor Tawes. Miss Shecter, do you have any personal knowledge of whether or not a film submitted to the Board, without tendering of the required [fol. 78] fee, would be examined by the Board?

A. It is against the law. The law as set forth, states that the fee must be paid before the reviewing takes place.

Q. I understand, then, by your answer that since the law provides that a fee should be tendered that if it were not tendered the film would not be examined, is that correct?

A. Yes, sir.

The Court: Gentlemen, we are perfectly clear on that, unless you pay your money you can't have your film reviewed, no use going over that with every witness, that is clear to me. Go ahead, now, Mr. Whiteford.

By Mr. Whiteford:

Q. Miss Shecter, it is also true, is it not, that under the Act no newsreel is subject to censorship, is that correct?

A. Yes.

Mr. Freeze: Your Honor, I will again renew all objections, to this previous witness too, other than the case at point, and ask for a continuing objection to all the [fol. 79] testimony.

The Court: Very well, I will overrule the objection. You may proceed, Mr. Whiteford.

By Mr. Whiteford:

Q. It is further true, is it not, that no film shown on television in the State of Maryland is subject to censorship by the Maryland Board of Censors?

A. That goes under the FCC, Federal Communications.

Q. The answer, then, is no?

A. No television.

The Court: No censorship of television shows, that is also clear and I am sure it could be stipulated.

By Mr. Whiteford:

Q. And, Mrs. Shecter, it is also true, is it not, that the Maryland State Board of Censors does not review any film that is shown for a purely educational purpose in a non-commercial house, is that true?

A. Yes.

Q. And that the Maryland State Board of Censors does [fol. 80] not review any film for non-commercial purpose shown by a charitable or a fraternal or religious organization?

A. Yes.

Q. And, further that the Maryland State Board of Censors does not review any films shown for non-commercial purpose in a museum or a public library or a public school or a private school?

A. Yes.

Q. In the State of Maryland. Miss Shecter, are you familiar with the Section 6 of the Censorship Law of the State of Maryland, that is the section which has the various standards set out in it?

A. Yes.

Q. You are familiar with those standards?

A. Yes.

Q. Miss Shecter, I want to refer you particularly to Section 6 A, sub-section C and a portion of that which reads: in relation to the—I will read the whole section:

For the purposes of this Article, a motion picture film [fol. 81] or view shall be considered to be of such a character that its exhibition would tend to debase or corrupt morals if its dominant purpose or effect is erotic or pornographic; or if it portrays acts of sexual immorality, lust or lewdness, or if it expressly or impliedly presents such acts as desirable, acceptable, or proper patterns of behavior.

Are you familiar with that standard set out in the Act?

A. I am.

Q. Have you in your capacity as vice-chairman of the Maryland Censorship Board ever censored a film with that particular standard in mind?

A. I have.

Q. Are you aware that the exact phraseology of that standard was declared unconstitutional by the Supreme Court several years ago?

A. That is not altogether correct. The way I understand it, I may not be altogether correct either, but the way I understand it each picture was a separate entity [fol. 82] unto itself and not every picture may be shown with every immoral act, but it was referring to Lady Chatterley's Lover, or one particular film, but that did not make it right for every immoral picture to be shown.

Q. Mrs. Shecter, have you read the Supreme Court opinion in Kingsley International Picture Corporation versus Regents of New York which is found in 360 U. S. at page 689?

A. No, I have not.

Q. No, not having read the opinion, then, you don't know what the Supreme Court said in this case?

A. I know the ruling that we were familiarized with in our office on Lady Chatterley's Lover.

Q. Did that ruling set out that these very words, which are immoral and that they portray acts of sexual immorality as desirable, acceptable or proper patterns of behavior, were declared unconstitutional and unenforceable?

A. If the acts of immoral behavior were glamorized or glorified it was still within our rights not to permit them [fol. 83] to pass.

Q. That is your interpretation, is that correct?

A. That is my interpretation, yes.

Q. And, thus, you still censor films in the State of Maryland based on that particular standard?

A. I did not understand your question.

Q. You thus base your censorship of films in the State of Maryland based on the standard which I just read, is that correct?

A. Not all of the films, no. We censor obscenity, we censor for other types of immorality we censor for nudity, or exposure, or pubic exposure, or breast exposure.

Q. Miss Shecter, let me get nudity, what standards do you apply to nudity in motion picture films?

A. There isn't an overall standard, are you referring to any particular film?

Q. I am referring to what standard, if any, you have in regard to nudity in a motion picture film?

A. We do not pass pubic nudity, we do not pass breast [fol. 84] exposures.

Q. Now, Miss Shecter, let me review for a moment, are you saying that the Maryland Board, State Censors, does not pass breast exposure?

A. In a nudist camp film there was a ruling on a documentary, The Naked Amazon, in which we were ruled to permit this breast exposure to pass, and because of that ruling we had to permit nudist camp films to pass with breast exposures.

Q. Would it be correct, then, if I said the Maryland State Board of Censors allow breast exposures in a film situated in a nudist camp?

A. If it confirms that there is a nudist camp in the film.

Q. And if that same identical view did not confirm that the exposure took place in a nudist camp, the Maryland State Board of Censors would order that particular view deleted, is that correct?

A. Yes.

Q. And the case that you refer to, having read the case, the Time Films versus the Maryland State Board of Censors, [fol. 85] sors, which you refer to as the case in which the State permits breast exposure in nudist colonies?

A. I don't know what you are referring to.

Q. I don't blame you, it wasn't a very good question, Miss Shecter.

Miss Shecter, you referred to a case that was decided by the Maryland Court, 6th Appeals which led to the Censor Board's allowance of breast exposure in nudist camps. Do you know the name of that case?

A. No, I don't. I think the film that is—as close as I can recall, the film was The Naked Amazon, the name of the film, but who brought it to court I don't know.

Q. Now, did you ever see the film Naked Amazon?

A. It came into the office before I was on the Board.

Q. I take it, then, your answer is no?

A. Yes.

Q. Have you read the opinion of the Maryland Court of Appeals in regard to the film Naked Amazon?

[fol. 86] A. I did a while back, I don't know if I am familiar with it now.

Q. Is it your opinion that this particular opinion of the Maryland Court of Appeals allows breast exposure in nudist camps on motion picture screens, but nowhere else?

Mr. Freeze: Objection.

The Court: Well, we have gone this far, let her answer if she can. Overruled.

Mr. Freeze: I think she indicated she wasn't familiar with the case now.

The Court: Well—

Mr. Whiteford: Your Honor, I will let her—

The Court: All right, let her answer.

Mr. Whiteford: If she is not familiar with it I don't want to press her.

The Court: Are you familiar with it?

Witness: No, I am not familiar with it.

The Court: She is not.

By Mr. Whiteford:

Q. Miss Shecter, when evaluating a film in regard to [fol. 87] whether or not it is obscene, what standard do you apply as to the word obscenity?

A. I think my discretion for good taste would take care of that, I don't think I could pinpoint the act of immorality in every picture that comes into the office, which ones are more obscene than others. We have to use our discretion and good taste.

Q. And would it be correct to say that if a particular scene or view offended your sense of discretion or good taste, you would, therefore, then consider that particular scene or view objectionable and censorable?

A. You are not speaking of my personal opinion, you are speaking as my official censor?

Q. Yes.

A. Well, there is a big difference; whereas I would not consider personally some of the sequences discretionary, as a board member I would have to pass them because of previous rules.

Q. Now, Miss Shecter, you are aware, are you not, that the Maryland Censorship statute purports to allow censor- [fol. 88] ship of a scene or view or a movie that would tend to incite to crime. What standard do you apply to inciting to crime, in your capacity as a censor, not in your personal feelings?

A. Well, as a censor it is hard to say, there is no statistics to say that the boy saw a movie and then went out and raped someone; or, this boy saw an exposure and then went out and exposed someone. By the same token, I don't think it would do an adolescent or even a grown man any good to be incited sexually by an entertainment; that is not the purpose of movies to excite anybody sexually.

Q. Miss Shecter, could you apply discretionary standards as a censor?

A. That is right.

Q. In regard to this particular inciting to crime?

A. That is right.

Q. That is the same sort of discretionary standard that you apply in regard to obscenity as a censor? [fol. 89] A. That is right.

Q. And I would assume that you also apply a discretionary standard to the provision of the Maryland Code which provides that a film may be censored if it would tend to debase or corrupt morals, is that correct?

A. Repeat that again, please.

(Question read.)

A. That is correct.

Q. Miss Shecter, in your opinion as a censor, is nudity on a motion picture screen censorable?

A. What form of nudity and how much nudity do you refer to? If say breast exposure outside of a nudist camp, I would vote for the deletion.

Q. Would that same scene, if it were published in a magazine, in your opinion be worthy of censorship?

A. We don't censor magazines.

Q. Do you think they should be censored?

Mr. Freeze: Objection.

The Court: Sustained.

By Mr. Whiteford:

[fol. 90] Q. Miss Shetter, are you a sculptress?

A. Yes, I am.

The Court: Are you what?

Mr. Whiteford: A sculptress.

The Court: Yes, all right, she is a sculptress, that is fine.

Mr. Whiteford: And she is a very fine one, Your Honor, I might add.

The Court: I understand she is.

By Mr. Whiteford:

Q. In your vocation as a sculptress you, on occasion, have won prizes, haven't you, for females in the nude?

A. One prize.

Mr. Freeze: Objection. Objection.

The Court: Now, let's keep this on a serious vein now, Mr. Whiteford. What is the question so we can get right to it.

Mr. Whiteford: The specific question asked?

The Court: Yes, let's get to the specific question. You [fol. 91] mean, has she sculptured nude models and I suppose she has.

Mr. Whiteford: Your Honor, not only that, she has—not only that but she has won prizes for it.

The Court: I think she is very proud of it and—

Mr. Whiteford: I would be very proud if I could do it, and I am not criticizing her for it.

The Court: That is not going to help me in this case.

Mr. Freeze: There was an objection.

The Court: I will overrule it.

By Mr. Whiteford:

Q. Miss Shecter, needless to say, you did not consider that creation of yours obscene, did you?

Mr. Freeze: Objection.

The Court: Sustained.

Mr. Whiteford: No further questions.

Mr. Freeze: The State will again renew its objection to the entire line of questioning of Miss Shecter other than the name and address and the fact she is a board member [fol. 92] and renews its objection.

The Court: I will overrule the objection. You may step down.

Mr. Whiteford: Miss Avara in the courtroom?

The Court: I believe not, he said she was at a funeral.

Mr. Freeze: Yes, Your Honor, Miss Avara, a member of the censor board, is at a funeral today and could not be in court.

The State is willing to stipulate that her testimony would follow that of the two other members of the Board; and, that they follow the Maryland statute in light of the Supreme Court decisions.

Mr. Whiteford: Your Honor, we will accept the stipulation that Miss Avara would testify that in applying the standards of this Act that she applies discretionary standards.

Mr. Freeze: Well, there was testimony from the first witness, Your Honor, I think, as to discretionary standards [fol. 93] but would testify that she would follow the Maryland Act in the light of the Supreme Court decisions.

Mr. Whiteford: Your Honor, I believe the effect of the witness, the first witness' testimony—

The Court: I don't want to interrupt this, apparently you can't enter into a stipulation. So, we will have to have Mrs. Avara's testimony, as I see it.

Mr. Freeze: All right, you want a third member of the Board?

Mr. Whiteford: I can't stipulate, Mr. Freeze, that Mrs. Avara—

Mr. Freeze: I don't know what Mrs. Avara would say other than what the other witnesses have said; but be glad to stipulate she is a member of the Board and would apply the Maryland Act as codified under 66 A Sections 1, up until the one pertaining to the motion picture act; over and above that I cannot speak for Mrs. Avara.

Mr. Whiteford: I can't accept that stipulation.

The Court: Then we can't go on, we will have to wait until Mrs. Avara is available; and, you have a right to call [fol. 94] her as a witness.

Mr. Whiteford: Your Honor, in view of the stipulation we would not call her; we do not want to hold up the proceedings any longer.

OFFER IN EVIDENCE

Like to offer in evidence House Bill #432 that Mr. Gebhart so kindly provided.

The Court: All right.

(Thereupon the above-mentioned bill was then marked Defendant's Exhibit Number 5.)

The Court: Any other testimony, Mr. Whiteford?

Mr. Whiteford: That is all our questions. The defendant closes their case, Your Honor.

The Court: Very well. Any additional testimony on the part of the State?

Mr. Freeze: No, no rebuttal, Your Honor.

Mr. Whiteford: Your Honor, at this time the Defendant offers a motion for a judgment of acquittal. It is incorrectly titled on the paper which I am about to pass you, by acquittal. But, it is our motion, is that for a judgment of acquittal.

[fol. 95] I would also like to state, for the purpose of the record, that the many reasons enumerated in this motion are not the only reasons which we are basing this motion upon. And that there are others that, because of time and space, all involving basic constitutional issues, that we have not enumerated and we do not intend to restrict ourselves to the specific reasons enumerated in the motion.

The Court: May I see counsel in this case, please.

(Bench Conference; Bench Conference terminated.)

BOTH SIDES REST

The Court: Gentlemen, just to make the record perfectly clear, both sides have rested; and, the defendant has filed a motion for a judgment by acquittal and I am holding the decision on that judgment sub curia pending the filing on behalf of both the defendant and the State a memorandum which I will consider and thereafter decide this case.

Mr. Whiteford: Thank you, sir.

[fol. 96]

IN THE CRIMINAL COURT OF BALTIMORE**MOTION FOR JUDGMENT BY ACQUITTAL—
Filed March 19, 1963**

Now comes Ronald L. Freedman, Defendant, and moves for Judgment of Acquittal and as reason therefore says:

1. That Article 66A upon its face violates the First and Fourteenth Amendments of the United States Constitution in that the said Article imposes an invalid infringement upon the exercise of the right of free speech and press.
2. That Article 66A upon its face violates Article 40 of the Maryland Declaration of Rights in that it imposes an infringement upon the exercise of the right of free speech and press.
3. That Article 66A is invalid as contrary to the Due Process Clause of the Fourteenth Amendment in that the standards pursuant to which speech is abridged set forth in, more specifically, Section 6 of the said Article, are vague and in that these standards fail to advise defendant of those forms of speech which the state purportedly proscribes.
4. That Article 66A is invalid as contrary to the Due Process Clause of Article 23 of the Declaration of Rights of Maryland in that the standards contained in Section 6 thereof which permit the depriving of defendant's life, liberty or property are couched in vague language which fail to apprise defendant of the conduct the statute seeks to proscribe.

5. That Article 66A is so vague and indefinite in form that it can be interpreted as to permit within the scope of its language the banning of incidents fairly within the pro-[fol. 97] tection or guarantee of freedom of speech and press and is therefore void as contrary to the Fourteenth Amendment of the United States Constitution and as contrary to the terms of the Maryland Constitution.

6. That Article 66A is invalid if it is so construed and implied to deny to the defendant the exercise of his rights to free speech and press contrary to the United States Constitution and the Maryland Declaration of Rights.

7. That Article 66A is invalid as contrary to and imposes an unlawful infringement upon the Inter-State Commerce Clause of the United States Constitution.

8. That Article 66A is invalid in that it imposes a tax and/or a license fee upon the right of the freedoms of speech and press and is thus contrary to the First and Fourteenth Amendments of the United States Constitution and of Article 40 of the Maryland Declaration of Rights.

9. That Article 66A is invalid and void in that it is an unlawful and illegal delegation of legislative authority to an administrative agency.

10. That Article 66A is invalid in that it acts as a denial of due process in contravention of the United States and Maryland Constitutions in that it allows an administrative board to unlawfully usurp the judicial function.

11. And for other such good and valid reasons that may be argued.

55

EXHIBITOR'S COPY
Printed in U. S. A.

[fol. 98]

STATE'S EXHIBIT No. 1-A

TIMES FILM CORPORATION

144 WEST 57th STREET, NEW YORK 19, N. Y.

Telephone: PLaza 7-6980

29. The following schedule and all the written and printed parts thereof are part of this agreement.

THEATRE	TOWN AND STATE
REX	Baltimore, Maryland
PICTURES:	
REVENGE AT DAYBREAK	
RUN:	
Maryland Premiere beginning November 1st, 1962	
RENTAL:	
30%	

ADDITIONAL PROVISIONS:

advertising to be determined mutually, all advertising off the top.

IN WITNESS WHEREOF, the Exhibitor, operating the Rex Theatre, located at
No. Street, Baltimore City, Maryland State, on Nov. 1st
duly executed this application, which upon written acceptance by Distributor in the space to the left provided below shall be deemed to be a limited and non-exclusive li-
cense to said Exhibitor to exhibit the motion picture specified in the schedule in accordance with the terms and conditions above and on the back hereof.

TIMES FILM CORPORATION

Baltimore Film Society, Inc.

REVENGE AT DAYBREAK

RUN:

Maryland Premiere beginning November 1st, 1962

RENTAL:

30%

ADDITIONAL PROVISIONS:

advertising to be determined mutually, all advertising off the top.

IN WITNESS WHEREOF

the Exhibitor, operating the Rox Theatre, located at
No. _____ Street _____ City Baltimore State Maryland on Nov. 1st

duly executed this application, which upon written acceptance by Distributor in the space to the left provided below shall be deemed to be a limited and non-exclusive license to said Exhibitor to exhibit the motion picture specified in the schedule in accordance with the terms and conditions above and on the back hereof.

TIMES FILM CORPORATION

COUNTERSIGNED

Salesman

I. S.

APPROVED

Director

10

TIMES FILM CORPORATION

By

Sales Director

I. S.

By

General Manager

Officer

Individual

(Strike out three) I. S.

As an inducement to the Distributor to execute this license agreement, and in consideration thereof the undersigned hereby personally guarantees the performance of the terms of this agreement and the payment of any rental, damages and other sums of money provided for herein.

I. S.

LICENSE AGREEMENT

AGREEMENT made between **TIMES FILM CORPORATION**, hereinafter referred to as Distributor, the Exhibitor named in the Schedule and the person signing on Exhibitor's behalf:

1. **LICENSE** — Distributor grants to Exhibitor and Exhibitor hereby accepts a limited license to exhibit publicly the motion picture designed in the Schedule (hereinafter referred to as the "Picture") at only the particular theatre designated in the Schedule (hereinafter referred to as the "Theatre") for the number of consecutive days and particular days of the week specified in the Schedule and for no other use or purpose. This license shall include a license under all copyrights owned or controlled by Distributor to such picture and the recorded sound in synchronism therewith but not the right to perform in public any musical work included in such recorded sound the right of public performance of which is not owned or controlled by Distributor or licensed to Distributor with the right to grant sublicenses. Exhibitor agrees to exhibit said picture as provided in this agreement and pay the license fees specified in the Schedule.

2. **PAYMENT** — If the license fee is based upon a percentage of Exhibitor's gross receipts, Exhibitor agrees to account to Distributor for each person admitted on the basis of the respective admission prices in effect (collected, advertised or posted at the box office, whichever is highest) at the theatre at each performance during the entire engagement of the picture. Admission taxes collected may be deducted before computing Distributor's share. Exhibitor agrees to furnish immediately after

[fol. 99]

the end of the engagement a box office statement showing the number of admissions at the respective prices charged at each performance on forms furnished by Distributor. This statement shall be signed by Exhibitor's cashier and countersigned by the Exhibitor or by the theatre manager. Distributor shall have full right to check the sale of tickets and the receipts therefrom, including free access to all parts of the theatre and the right to examine ticket machines, tickets, stubs, books and records, and the right to audit at any time. All fixed or guaranteed license fees shall be payable at least three days in advance of the date of delivery of a print of the picture to the theatre. License fees based upon a percentage of receipts shall be payable immediately after the last exhibition of the picture at the theatre or if so requested by Distributor at the end of each day's exhibition. Distributor may C. O. D. for any indebtedness of Exhibitor to Distributor under this and any other agreement.

3. DAMAGES—FAILURE TO EXHIBIT—If Exhibitor fails or refuses to exhibit the picture as herein provided, Exhibitor shall pay to Distributor as liquidated damages for each day it should have exhibited the picture a sum equal to the percentage specified in the Schedule of the theatre's average daily gross receipts during the exhibition thereof of any other pictures. If no other pictures have been exhibited the average to be used shall be the theatre's gross receipts on Distributor's percentage pictures during the 30 days prior to the date of such failure or refusal. If none of Distributor's pictures were exhibited during such period on percentage terms the average to be used shall be twice the theatre's daily gross receipts during the 30 operating days prior to the day of such failure or refusal. If any fixed or guaranteed sums are provided in the Schedule, they shall also be payable to Distributor as liquidated damages in the same manner as if the picture had played and produced gross receipts calculated as provided above.

4. PRINTS—Distributor agrees to deliver a print of the picture suitable for exhibition when used with appropriate equipment to Exhibitor or Exhibitor's agent at Distributor's exchange, or to a common carrier designated by Exhibitor, and acceptable to Distributor or to the postal authorities for mailing. Exhibitor agrees to return each print and the reels and containers thereof to Distributor's exchange in the same condition as when received, reasonable wear and tear due to proper use excepted, immediately after the last exhibition and to pay transportation charges both ways, except if directed to ship elsewhere than to Distributor's exchange, Exhibitor shall so ship, transportation charges collect. Exhibitor agrees to pay to Distributor the cost of replacement of any print or part of any print, or any reels or containers lost, stolen, destroyed or damaged between delivery by Distributor and return by Exhibitor.

5. SELECTION OF PLAY DATES—Unless definitely specified or otherwise agreed upon or provided in the Schedule, the exhibition date of the picture shall be determined as follows:

Subject to prior runs and clearance heretofore or hereafter granted other exhibitors, to the general release of the picture in the exchange territory and to the availability of a print suitable for use with the type of sound equipment installed at the theatre, Distributor shall mail written notice of the date the picture will be available to Exhibitor. Within fourteen days after such mailing, Exhibitor shall select and notify Distributor in writing of the exhibition date which shall commence within 30 days after the available date. If such date or dates are acceptable to Distributor it shall confirm the same. If the date Exhibitor selects shall not be acceptable to Distributor or shall have been assigned to another exhibitor, or if no print shall be available for such date, Exhibitor shall forthwith select another date falling within said period. Upon failure of Exhibitor to select a play date as herein specified, Distributor may designate same by mailed notice. If Exhibitor shall fail for any reason to exhibit the picture within 30 days of availability, the clearance, if any, herein granted is waived by Exhibitor.

6. CLEARANCE AND RUN—Unless otherwise provided, clearance is to be computed from the last license date of exhibition. Distributor agrees not to exhibit or license the exhibition of the picture at any other theatre specified in the Schedule provided they are in substantial competition with the licensed theatre prior to the expiration of the clearance period, if any, specified in the Schedule. The damages which may be awarded for any violation hereof shall not exceed the amount of the license fee, and such claim for damages as limited above shall be Exhibitor's sole and exclusive remedy on account of any such violation. The "trade showing," "road showing," "tryout," "preview," "midnight show" or "pre-release" of the picture shall not be deemed either a run of the picture, a general release of the picture or in conflict with any license granted hereunder.

If the run licensed hereunder is not a first run Distributor may license the picture as a continued prior run, either at the theatre where the picture is exhibited as a prior run or at another theatre immediately after the prior run without any days intervening. Exhibitor's availability of any pictures exhibited on a continued prior run shall be postponed and any clearance granted the theatre exhibiting such continued prior run shall be extended for a period corresponding to the length of such continued prior run unless otherwise specified in the Schedule.

7. ADVERTISING—Exhibitor shall advertise and announce the licensed picture as "A Times Film Release." In all newspaper advertising and publicity issued by Exhibitor relating to the licensed picture Exhibitor shall adhere to the form of announcement contained in the advertising matter issued by Distributor.

8. EXECUTION AND ACCEPTANCE—Until accepted in writing by Distributor in the space provided on reverse hereof and the return of an executed copy hereof to Exhibitor, this instrument and any other offers made by Exhibitor for the license of the picture for exhibition at the theatre shall be deemed only an application for a license for the picture to the theatre and may be withdrawn by Exhibitor or rejected by Distributor at any time before such acceptance. Acceptance by Distributor of any check or other consideration as payment for any purpose, any notice to Exhibitor of any acceptance or award with respect to any bid, or the delivery of a print of the picture to the theatre shall not be deemed an acceptance hereof or the licensing of the picture by Distributor.

If this instrument is signed on behalf of Exhibitor by any one other than Exhibitor, the person or entity so signing represents and warrants that he or it is authorized to sign this instrument on behalf of Exhibitor and agrees to be bound hereunder jointly and severally with Exhibitor.

9. CHANGES IN WRITING—This agreement is complete and all promises, representations, understandings, offers and agreements in reference thereto have been expressed herein. No change or modification hereof shall be binding upon the Distributor unless in writing signed by an officer or a person authorized by the Distributor.

10. ASSIGNMENT—This agreement shall not be assigned by either party without the written consent of the other except that Distributor may assign to a subsidiary or affiliate.

11. TAXES—Exhibitor shall pay to Distributor any and all taxes (or a sum equal thereto) duly imposed or hereafter duly imposed, levied or based upon the license, delivery, exhibition, possession or use by Exhibitor of the prints of the picture or upon the grant of this license or the exercise thereof or based upon or measured by the license fee or any part thereof, however determined, paid or payable by Exhibitor to Distributor under this agreement. The word "tax" as used in this paragraph shall be deemed to include but shall not be limited to taxes, fees, assessments, charges, imposts, levies, excises, however designated, whether an ad valorem, gross income, gross receipts, storage, use, consumption, license, compensating, excise, privilege or other taxation. If the exact amount of any tax is not definitely fixed or stated, it shall be exactly determined. Distributor may estimate the amount of such tax and Exhibitor shall pay to Distributor such estimated amount upon demand therefor. Upon final determination of the exact amount, Exhibitor shall be entitled to repayment of any amount paid in excess of the tax. Upon the failure or refusal of Exhibitor to pay any tax, Distributor shall have the same remedies as herein provided for default in payment of license fees in addition to the other remedies provided by law.

12. PREVENTION OF PERFORMANCE—If Exhibitor shall be prevented from exhibiting or Distributor from delivering the licensed picture, by reason of fire, strike, labor dispute, riot, insurrection, war, catastrophe, casualty, the public enemy, legal proceedings, rules and regulations of any governmental body or authority, act of God, or the elements, and, without limiting the foregoing, any cause beyond the control of either party, the delivery of the picture hereunder shall be temporarily suspended for the time equal to the period performance is so prevented. Performance shall be resumed by the party so affected immediately after the removal or abatement of the cause of such interruption and the repair of any damage occasioned thereby. If such suspension of performance shall continue for a period of 10 days, this license in respect of such picture shall at Distributor's option at any time thereafter terminate and revert to Distributor without liability on the part of either party.

13. DEFAULTS—If Exhibitor shall fail or refuse to perform the terms and provisions of this or any other agreement, or any of them, or if Exhibitor becomes insolvent or is adjudicated a bankrupt, or executes an assignment for the benefit of creditors, or if a receiver or trustee is appointed for any of the property of Exhibitor, or if Exhibitor voluntarily or by operation of law should lose control of the said theatre or of his interest therein, or if an order is entered approving a petition filed by or against Exhibitor under the Bankruptcy Laws then, at any time after the happening of any one or more of said events, Distributor may at its option: (1) terminate this and any other license agreements, or (2) suspend the delivery of the picture hereunder until such default or defaults shall cease and be remedied. The exercise of either remedy by Distributor shall be in addition to and without prejudice to any right or remedy of Distributor against Exhibitor at law or in equity or otherwise provided for in this agreement.

14. CUTTING OR ALTERATION OF PRINTS—The Exhibitor shall exhibit each print in its entirety and shall not copy, duplicate, sub-rent or part with possession of any print. The Exhibitor shall not cut or alter any print, other than to make necessary repairs thereto, or when required by a duly constituted public official or authority.

15. TICKETS OF ADMISSION—When pictures are exhibited at a license fee based upon a percentage of the gross box office receipts, Exhibitor agrees that admission to the theatre shall be obtained only by the presentation of tickets purchased at the box office of the theatre excepting a reasonable number of passes. Exhibitor agrees all tickets shall be serially numbered consecutively in Arabic numbers from 1 up to 500,000. Series of tickets shall be distinguished by using as a prefix to the numbers letters of the alphabet in order starting with the letter "A". Not more than one series of tickets shall be used at any time and none shall be duplicates. Tickets shall bear the name of the theatre for which they are sold and the price of admission and all taxes. Tickets of different admission prices shall have separate and decidedly distinct colors. Only a reasonable number of free admissions consistent with good judgment and general current practices will be issued.

16. BREACH OF OTHER AGREEMENTS—If the Exhibitor shall breach any other agreement between the Exhibitor and Distributor made prior to, simultaneously with or subsequent to the making of this agreement, then any such breach under such agreement shall be deemed to be a breach and a default under this agreement and in any such case the Distributor shall have all the rights and remedies herein provided as well as those at Law, in Equity or otherwise, to the same full force and to the same extent as if such breach has been committed hereunder.

stolen, destroyed or damaged between delivery by Distributor and return by Exhibitor.

5. SELECTION OF PLAY DATES—Unless definitely specified or otherwise agreed upon or provided in the Schedule, the exhibition date of the picture shall be determined as follows:

Subject to prior runs and clearance heretofore or hereafter granted other exhibitors, to the general release of the picture in the exchange territory and to the availability of a print suitable for use with the type of sound equipment installed at the theatre, Distributor shall mail written notice of the date the picture will be available to Exhibitor. Within fourteen days after such mailing, Exhibitor shall select and notify Distributor in writing of the exhibition date which shall commence within 30 days after the available date. If such date or dates are acceptable to Distributor it shall confirm the same. If the date Exhibitor selects shall not be acceptable to Distributor, or shall have been assigned to another exhibitor, or if no print shall be available for such date, Exhibitor shall forthwith select another date falling within said period. Upon failure of Exhibitor to select a play date as herein specified, Distributor may designate same by mailed notice. If Exhibitor shall fail for any reason to exhibit the picture within 30 days of availability, the clearance, if any, herein granted is waived by Exhibitor.

6. CLEARANCE AND RUN—Unless otherwise provided, clearance is to be computed from the last license date of exhibition. Distributor agrees not to exhibit or license the exhibition of the picture at any other theatre specified in the Schedule provided they are in substantial competition with the licensed theatre prior to the expiration of the clearance period, if any, specified in the Schedule. The damages which may be awarded for any violation hereof shall not exceed the amount of the license fee, and such claim for damages as limited above shall be Exhibitor's sole and exclusive remedy on account of any such violation. The "trade showing," "read showing," "tryout," "preview," "midnight show" or "pre-release" of the picture shall not be deemed either a run of the picture, a general release of the picture or in conflict with any license granted hereunder.

If the run licensed hereunder is not a first run Distributor may license the picture as a continued prior run, either at the theatre where the picture is exhibited as a prior run or at another theatre immediately after the prior run without any days intervening. Exhibitor's availability of any pictures exhibited on a continued prior run shall be postponed and any clearance granted the theatre exhibiting such continued prior run shall be extended for a period corresponding to the length of such continued prior run unless otherwise specified in the Schedule.

7. ADVERTISING—Exhibitor shall advertise and announce the licensed picture as "A Times Film Release." In all newspaper advertising and publicity issued by Exhibitor relating to the licensed picture Exhibitor shall adhere to the form of announcement contained in the advertising matter issued by Distributor.

8. EXECUTION AND ACCEPTANCE—Until accepted in writing by Distributor in the space provided on reverse hereof and the return of an executed copy hereof to Exhibitor, this instrument and any other offers made by Exhibitor for the license of the picture for exhibition at the theatre shall be deemed only an application for a license for the picture to the theatre and may be withdrawn by Exhibitor or rejected by Distributor at any time before such acceptance. Acceptance by Distributor of any check or other consideration as payment for any purpose, any notice to Exhibitor of any acceptance or award with respect to any bid, or the delivery of a print of the picture to the theatre shall not be deemed an acceptance hereof or the licensing of the picture by Distributor.

If this instrument is signed on behalf of Exhibitor by any one other than Exhibitor, the person or entity so signing represents and warrants that he or it is authorized to sign this instrument on behalf of Exhibitor and agrees to be bound hereunder jointly and severally with Exhibitor.

9. CHANGES IN WRITING—This agreement is complete and all promises, representations, understandings, offers and agreements in reference thereto have been expressed herein. No change or modification hereof shall be binding upon the Distributor unless in writing signed by an officer or a person authorized by the Distributor.

10. ASSIGNMENT—This agreement shall not be assigned by either party without the written consent of the other except that Distributor may assign to a subsidiary or affiliate.

11. TAXES—Exhibitor shall pay to Distributor any and all taxes (or a sum equal thereto) duly imposed or hereafter duly imposed, levied or based upon the license, delivery, exhibition, possession or use by Exhibitor of the prints of the picture or upon the grant of this license or the exercise thereof or based upon or measured by the license fee or any part thereof, however determined, paid or payable by Exhibitor to Distributor under this agreement. The word "tax" as used in this paragraph shall be deemed to include but shall not be limited to taxes, fees, assessments, charges, imposts, levies, excises, however designated, whether as a sales tax, income, gross receipts, storage, use, consumption, license, compensating excise, privilege or other taxation. If the exact amount of any tax is not definitely fixed or established by law, Distributor may estimate the amount of such tax and Exhibitor shall pay to Distributor such estimated amount upon demand therefor. If upon final determination of the exact amount, Exhibitor shall be entitled to repayment of any amount paid in excess of the tax. Upon the failure or refusal of Exhibitor to pay any tax, Distributor shall have the same remedies as herein provided for default in payment of license fees in addition to the other remedies provided by law.

12. PREVENTION OF PERFORMANCE—If Exhibitor shall be prevented from exhibiting or Distributor from delivering the licensed picture, by reason of fire, strike, labor dispute, riot, insurrection, war, catastrophe, casualty, the public enemy, legal proceedings, rules and regulations of any governmental body or authority, act of God or the elements, and, without limiting the foregoing, any cause beyond the control of either party, the delivery of the picture hereunder shall be temporarily suspended for the time equal to the period performance is so prevented. Performance shall be resumed by the party so affected immediately after the removal or abatement of the cause of such interruption and the repair of any damage occasioned thereby. If such suspension of performance shall continue for a period of 10 days, this license in respect of such picture shall at Distributor's option at any time thereafter terminate and revert to Distributor without liability on the part of either party.

13. DEFAULTS—If Exhibitor shall fail or refuse to perform the terms and provisions of this or any other agreement, or any of them, or if Exhibitor becomes insolvent or is adjudicated a bankrupt, or executes an assignment for the benefit of creditors, or if a receiver or trustee is appointed for any of the property of Exhibitor, or if Exhibitor voluntarily or by operation of law should lose control of the said theatre or of his interest therein, or if an order is entered approving a petition filed by or against Exhibitor under the Bankruptcy Laws then, at any time after the happening of any one or more of said events, Distributor may at its option: (1) terminate this and any other license agreements, or (2) suspend the delivery of the picture hereunder until such default or defaults shall cease and be remedied. The exercise of either remedy by Distributor shall be in addition to and without prejudice to any right or remedy of Distributor against Exhibitor at law or in equity or otherwise provided for in this agreement.

14. CUTTING OR ALTERATION OF PRINTS—The Exhibitor shall exhibit each print in its entirety and shall not copy, duplicate, sub-rent or part with possession of any print. The Exhibitor shall not cut or alter any print, other than to make necessary repairs thereto, or when required by a duly constituted public official or authority.

15. TICKETS OF ADMISSION—When pictures are exhibited at a license fee based upon a percentage of the gross box office receipts, Exhibitor agrees that admission to the theatre shall be obtained only by the presentation of tickets purchased at the box office of the theatre excepting a reasonable number of passes. Exhibitor agrees all tickets shall be serially numbered consecutively in Arabic numbers from 1 up to 500,000. Series of tickets shall be distinguished by using as a prefix to the numbers letters of the alphabet in order starting with the letter "A". Not more than one series of tickets shall be used at any time and none shall be duplicated. Tickets shall bear the name of the theatre for which they are sold and the price of admission and all taxes. Tickets of different admission prices shall have separate and decidedly distinct colors. Only a reasonable number of free admissions consistent with good judgment and general current practices will be issued.

16. BREACH OF OTHER AGREEMENTS—If the Exhibitor shall breach any other agreement between the Exhibitor and Distributor made prior to, simultaneously with or subsequent to the making of this agreement, then any such breach under such agreement shall be deemed to be a breach and a default under this agreement and in any such case the Distributor shall have all the rights and remedies herein provided as well as those at Law, in Equity or otherwise; to the same full force and to the same extent as if such breach has been committed hereunder.

17. RIGHT TO C.O.D.—It is agreed that the Distributor may at its option deliver to the Exhibitor C.O.D. the motion picture deliverable hereunder and may add to said C.O.D. the amount of any past indebtedness owing under this or any other agreement by the Exhibitor to the Distributor. Such indebtedness may include monies due from the Exhibitor to the Distributor for unplayed pictures, played pictures or for any other indebtedness whatsoever.

18. MONIES IN TRUST—Where this agreement calls for the payment of a fixed and definite rental for the said motion picture (that is to say not based upon a percentage of the gross receipts) then in case payment is not made in advance of the exhibition of the motion picture licensed hereunder and credit is extended to the Exhibitor, in consideration thereof, the Exhibitor agrees that the Distributor shall receive its rental for the said motion picture if credit has been so extended, out of the first admission receipts from the patrons paying admission during the exhibition of such motion picture up to the amount due the Distributor and such admission receipts shall belong to and be the property of the Distributor when they are paid by the patrons and shall be held in trust for the Distributor until paid to the Distributor and the ownership of said trust fund by the Distributor shall not be questioned whether the monies are physically segregated or not and the Exhibitor agrees to keep such portion of the gross receipts as are payable to the Distributor hereunder, in a separate and distinct fund. In the event the admission fees received during the exhibition of said motion picture are not equal to the amount of the license fee and/or rental due to the Distributor on account of such motion picture, the Exhibitor shall nevertheless remain and continue to be liable for the balance of the amount due and payable to the Distributor after the monies kept in trust for the Distributor shall have been paid to the Distributor.

19. SPECIAL PROVISIONS—This license is limited to the right to exhibit the picture at the theatre and only for the number of days and on the exhibition dates booked by Exhibitor and confirmed by Distributor in writing. This license includes no right of exhibition by means of any prints other than those furnished Exhibitor by Distributor for the express purpose of exhibition on the dates so confirmed for the designated theatre. Exhibitions between midnight and 6:00 A.M. are not permitted unless otherwise stated in the Schedule.

DEFENDANT'S EXHIBIT No. 1

**Rules Adopted by the Maryland
State Board of Motion Picture Censors**

In pursuance of Section 16 of the Act of 1922, Chapter 390
(As amended by the Acts of the General Assembly of Maryland of 1927, 1929, 1939, 1941, 1945, 1947, 1955 and 1960.)

1. All persons desiring to submit films or views to the Board for examination must fill out the application blanks provided by the Board, giving title, date of release, number of reels, number of feet, whether original or duplicate, character of film, whether comedy or drama, news, etc., and name of manufacturer. Applications must be signed by an authorized agent or representative of the owner or lessee of the films or views to be examined.

2. Applications must be accompanied by a check or cash covering full amount of censorship fee, and no films or views will be examined unless paid for in advance.

3. All applications for the examination of duplicate prints must be made by the original applicant within one year, otherwise they will be treated as originals and the full censorship fee of \$3.00 charged for one thousand feet or less (instead of \$1.00) where the film averages sixteen (16) frames or less to the foot; and a fee of \$4.00 charged for one thousand feet or less (instead of \$2.00) where the film averages more than sixteen (16) frames to the foot, as provided in the law for duplicates.

4. "Reels must be delivered to the Board at least 72 hours in advance of the date for their release in this State — Saturdays, Sundays and holidays not to be included. Reels will be examined by the Board within 48 hours after they are delivered to it, if possible, and will be available for the applicant's repossession the day following examination or on the same day thereof, if practicable.

5. All reels will be examined by the Board in the order in which they are received. Exception to this rule will be made only when application and fee have been received in advance

[fol. 101]

and a definite appointment has been made with the Board by the exchange manager or agent for the examination of a film.

6. Substitute seals to replace approval seals lost or destroyed will be supplied on censored prints, to exchange managers, agents and other duly authorized persons, if applications are made on form provided for the purpose, giving title and serial number of film for which a new seal is desired and upon furnishing proof, to the satisfaction of the Board, that the said print is the original censored print, and that all eliminations ordered, if any, are duly made and if perforations are missing, the Board at its discretion, may require a written statement or an affidavit to the effect that the said print is the original censored print and all eliminations ordered, if any, have been duly made. In the above case the Board, at its discretion, will re-perforate such prints free of charge. In case a censored print has been lost or destroyed, upon affidavit to that effect, made on form provided for the purpose, within a period of ninety (90) days, after filing of original application for censorship, the Board, at its discretion, will perforate and issue seal on such print the same as on prints originally censored. Substitute seals will not be issued on any subject after a period of two (2) years has elapsed since the filing of original application for censorship, unless perforations are on film at the time.

7. Substitute seals for use in the above case will be supplied under the conditions specified at a cost of \$1.00 each. The Board will replace perforations, at its discretion, free of charge.

8. All films or views must be presented to the Board as originally produced unless otherwise specified on the application. In case the print submitted has been subject to eliminations or changes prior to examination, a list of the same must accompany the application, and the approval seal will be issued for the film as presented.

9. Title of subject, name of manufacturer, and number of parts, as stated on application, must correspond to title, name of manufacturer and number of parts shown on screen.

10. Any change of title, or any alteration or addition made to any film or view after it has been examined by the Board,

[fol. 102]

must be submitted in writing for the approval of the Board, and if the changes meet with the Board's approval, it will issue an order to this effect.

11. No film or view shall be approved by the Board unless and until the person applying for such approval shall agree in writing to any eliminations which shall have been made by the Board, and shall certify in writing to the Board that such eliminations have been made, and shall further agree in writing that all scenes and titles condemned in film will be eliminated from all banners, posters, or other like advertising matter. Appeals from any order of the Board must be taken within ninety (90) days of receipt of notice of such order. After this period the Board will refuse to reexamine any film except upon payment of censorship fee of \$3.00 for one thousand feet or less where the film averages sixteen (16) frames or less to the foot; and a fee of \$4.00 for one thousand feet or less where the film averages more than sixteen (16) frames to the foot.

12. All trailers used as advance advertisements of uncensored films must be submitted to the Board before being exhibited in public. Trailers containing scenes approved in films are permitted. Trailers which are duplicates of censored and approved trailers need not be submitted for censorship.

13. The Board requires that all dialogue used in films, whether in English or in foreign language, together with a list of printed subtitles contained in any film, be submitted when the application for approval is made.

DEPENDANT'S EXHIBIT No. 5
Forty-fourth Annual Report

MARYLAND STATE BOARD

OF

MOTION PICTURE CENSORS



Offices
State Office Building
301 W. Preston Street
Baltimore 1, Maryland

.

MARYLAND STATE BOARD OF MOTION PICTURE CENSORS

For the Fiscal Year Ended June 30, 1960

RECEIPTS

FEES:

Original Reels—35MM (5,342,456 ft.).....	\$17,481.00	
Original Reels—16MM (9,297 ft.).....	48.00	
		\$17,529.00
Duplicate Reels—35MM (47,120,231 ft.).....	\$50,480.00	
Duplicate Reels—16MM.....		
		\$50,480.00
Sale of Substitute Seals (1266).....		1,266.00
		\$69,275.00
ADD: Credits (C&P Tel. Co. & Sale State Car).....		499.84
Deposited to Credit of State Treasurer.....		\$69,774.84

EXPENSES

SALARIES:

Board Members.....	\$ 9,231.22	
Other Employees.....	\$39,999.70	
		\$49,230.92

OTHER EXPENSES:

Communications.....	\$1,149.10	
Contractual Services, Office.....	247.82	
Printing.....	304.00	
Office Supplies.....	639.41	
Office Equipment, Additional.....	73.25	
Insurance and Bonds.....	42.50	
Contractual Services, Motion Picture.....	2,031.76	
Motion Picture Machine Supplies.....	146.68	
Motion Picture Equipment, Additional.....	138.60	
Technical and Special Fees.....	5,750.00	
Travel.....	606.70	
Motor Vehicle Operation & Maintenance.....	379.36	
Motor Vehicle Equipment.....	1,710.11	
		\$13,199.29
		\$62,430.21

BUDGET ACCOUNT (Per Comptroller)

Appropriations, 1960.....	\$62,833.00	
Add: Credits (C&P Tel. Co. & Sale State Car).....	499.84	
		\$63,332.84
Less Reversion to Reserve Fund.....		902.63
		\$62,430.21
General Fund Disbursement.....		\$62,430.21

MARYLAND STATE BOARD OF MOTION PICTURE CENSORS
TABLE SHOWING TOTAL ANNUAL RECEIPTS AND DISBURSE-
MENTS TOGETHER WITH THE AMOUNTS REVERTING
TO THE STATE TREASURY

October 1, 1920-June 30, 1960

	Receipts	Disbursements	Amount Reverting to State Treasury
10-1-20 to 9-30-21	\$26,488.33	\$19,025.26	\$7,463.07
10-1-21 to 9-30-22	26,866.90	19,842.12	7,024.78
10-1-22 to 9-30-23	27,059.51	19,892.93	7,166.58
10-1-23 to 9-30-24	26,338.50	20,730.44	5,608.06
10-1-24 to 9-30-25	29,249.50	22,207.24	7,042.26
10-1-25 to 9-30-26	30,407.92	22,662.82	7,545.10
10-1-26 to 9-30-27	32,498.55	24,883.80	7,614.75
10-1-27 to 9-30-28	38,165.57	27,734.69	10,430.88
10-1-28 to 9-30-29	44,486.27	32,937.76	11,548.51
10-1-29 to 9-30-30	38,954.98	31,718.26	7,236.72
10-1-30 to 9-30-31	35,245.85	31,816.79	3,429.06
10-1-31 to 9-30-32	35,637.44	32,158.81	3,478.63
10-1-32 to 9-30-33	35,152.34	34,207.93	944.41
10-1-33 to 9-30-34	36,563.00	37,174.49	9388.51
10-1-34 to 9-30-35	39,463.00	27,577.76	11,885.24
10-1-35 to 9-30-36	44,073.00	28,927.98	15,145.02
10-1-36 to 9-30-37	49,293.00	28,855.10	20,437.90
10-1-37 to 9-30-38	48,659.00	30,197.34	18,461.66
10-1-38 to 9-30-39	50,180.00	30,302.92	19,877.08
10-1-39 to 9-30-40	53,180.00	29,598.72	23,581.28
10-1-40 to 9-30-41	55,877.00	30,347.18	25,529.82
10-1-41 to 9-30-42	55,561.00	31,135.92	24,425.08
10-1-42 to 6-30-43	39,828.00	22,578.29	17,249.71
7-1-43 to 6-30-44	55,585.00	35,112.59	20,472.41
7-1-44 to 6-30-45	55,054.00	35,090.08	19,963.92
7-1-45 to 6-30-46	59,396.00	35,802.90	23,593.10
7-1-46 to 6-30-47	65,961.00	42,150.48	23,810.52
7-1-47 to 6-30-48	72,832.00	44,814.74	28,017.26
7-1-48 to 6-30-49	78,606.00	47,468.24	31,137.76
7-1-49 to 6-30-50	82,328.00	48,565.63	33,762.37
7-1-50 to 6-30-51	79,885.00	47,689.30	32,195.70
7-1-51 to 6-30-52	82,343.00	55,671.29	26,671.71
7-1-52 to 6-30-53	75,530.00	55,853.09	19,676.91
7-1-53 to 6-30-54	76,865.00	66,106.50	10,758.50
7-1-54 to 6-30-55	73,884.00	66,917.53	6,966.47
7-1-55 to 6-30-56	73,055.00	63,977.38	9,077.62
7-1-56 to 6-30-57	71,387.00	61,974.56	9,412.44
7-1-57 to 6-30-58	68,219.00	64,294.45	3,924.55
7-1-58 to 6-30-59	63,130.00	65,383.49	
7-1-59 to 6-30-60	69,774.84	62,430.21	7,344.63
	<hr/> \$2,102,863.50	<hr/> \$1,525,817.01	<hr/> \$579,299.98

* The above amount reverting to State Treasury does not include \$19,487.38 for period 6-1-16 to 9-30-20.

MARYLAND STATE BOARD OF MOTION PICTURE CENSORS

CLASSIFICATION OF FILMS

July 1, 1959—June 30, 1960

1959	Features	Short Subjects	Cartoons	Serials	Adver- tising	Misc.
July.....	589	32	61	6	12	0
August.....	581	28	68	13	2	0
September.....	467	30	91	8	3	0
October.....	566	44	252	8	5	0
November.....	414	32	53	0	5	0
December.....	443	36	56	10	1	0
1960						
January.....	487	35	73	8	3	0
February.....	434	39	79	8	6	0
March.....	459	41	74	4	6	0
April.....	404	50	88	0	3	0
May.....	398	46	79	0	3	0
June.....	579	67	69	10	3	0
TOTALS.....	5,821	480	1,043	75	52	0

SUMMARY OF REPORT

Films, Original.....	1,025			
Films, Duplicate.....	6,446			
Reels, Original.....		6,637		
Reels, Duplicate.....		58,810		
Number of feet, Original.....			5,351,753	
Number of feet, Duplicate.....			47,120,231	
Films Approved, Original.....				1,008
Films Approved, Duplicate.....				6,420
Films Modified in Part, Original.....				17
Films Modified in Part, Duplicate.....				26
Films Denied.....				0
TOTALS.....	7,471	65,447	52,471,984	7,471

MARYLAND STATE BOARD OF MOTION PICTURE CENSORS

REPORT OF FILMS EXAMINED

July 1, 1959—June 30, 1960

1959	Films		Reels		No. of Ft. Original	No. of Ft. Duplicate	Films Approved	Films Modified		Films Denied
	Original	Duplicate	Original	Duplicate				In Part Original	In Part Duplicate	
July.....	76	623	394	5,495	318,630	4,179,337	700	1	0	0
August.....	90	599	577	5,241	471,079	4,222,903	692	2	1	0
September.....	76	516	606	5,285	491,714	4,359,425	599	2	5	0
October.....	103	769	552	5,694	439,645	4,557,496	875	3	0	0
November.....	67	434	495	3,950	892,957	3,213,685	504	3	0	0
December.....	73	469	495	4,792	394,733	3,817,896	546	3	1	0
1960	4									
January.....	77	514	491	4,700	398,127	3,785,152	606	0	15	0
February.....	73	493	463	4,789	384,082	3,895,345	566	0	0	0
March.....	93	490	687	4,456	554,804	3,548,097	584	1	0	0
April.....	73	472	411	3,973	328,264	3,189,743	545	0	0	0
May.....	83	443	529	4,350	428,693	3,518,458	526	0	0	0
June.....	124	598	937	6,085	749,025	4,832,694	728	2	4	0
TOTALS.....	1,008	6,420	6,637	58,810	5,351,753	47,120,231	7,471	17	26	0

[fol. 108]

DEFENDANT'S EXHIBIT No. 4

Forty-Fifth Annual Report**MARYLAND' STATE BOARD****OF****MOTION PICTURE CENSORS**

Offices
State Office Building
301 W. Preston Street
Baltimore 1, Maryland

HONORABLE J. MILLARD TAWES

GOVERNOR OF MARYLAND

STATE HOUSE

ANNAPOLIS, MARYLAND

DEAR GOVERNOR TAWES:

The Maryland State Board of Motion Picture Censors takes pleasure in submitting to you herewith the forty-fifth Annual Report of its operations, for the fiscal year ending June 30, 1961.

During this period, the Board examined and processed a total of 7,074 subjects, of which 1,137 were original, and 5,937 were duplicates. Of these 7,074 subjects, 7,045 were approved without modification and 27 were modified in part, and two films were rejected in their entirety.

The year's total receipts were \$66,115.00. This revenue was derived from fees required by law for the Board's examination of films. After defraying expenses of \$66,039.41, the sum of \$1,577.65 unexpended appropriation was reverted to the Treasury. The all-time sum reverting to the Treasury amounts to \$598,862.95, since the inception of the Board.

A total of 5,460 films were inspected during the year. These inspections were of theatres throughout the State, periodically made, to check compliance with the State Motion Picture Censorship law, and orders issued by the Board.

Appended hereto are tables showing the results of the Board's work for the fiscal year ending June 30, 1961, and also summarizing the total annual receipts for the Board's forty-five years operation.

Respectfully,

Norman L. Mason
Chairman

[fol. 110]

MARYLAND STATE BOARD OF MOTION PICTURE CENSORS**For the Fiscal Year Ending June 30, 1961****RECEIPTS**

(a) Licenses (Original)	\$ 19,106.00
(b) Licenses (Duplicate)	46,306.00
(c) Licenses (Substitute)	703.00
Grand Total	\$ 66,115.00

TOTAL RECEIPTS FOR FORTY-FIVE YEAR PERIOD

	<u>Receipts</u>	<u>Expenses</u>	<u>Receipts in Excess of Expenditures</u>
1916 - 1961	\$2,168,978.50	\$1,591,816.42	\$598,862.95
Budget Appropriation July 1, 1960 through June 30, 1961			\$ 66,391.00

DISBURSEMENTS**Operating expenses:**

Salaries	\$ 9,299.59
Wages	40,971.00
Technical & Special Fees	5,937.50
Communication	1,049.93
Travel	2,682.17
Motor Vehicle Operation & Maintenance	455.33
Contractual Services	2,306.41
Materials & Supplies	1,084.54
Office Equipment-Replacement	964.13
Fixed Charges	62.75

Total Disbursements \$ 64,813.35**Amount Unexpended Appropriation as of June 30, 1961** \$ 1,577.65

[fol. 111]

MARYLAND STATE BOARD MOTION PICTURE CENSORS

CLASSIFICATION OF FILMS

JULY 1, 1960—JUNE 30, 1961

1960	Features	Short Subjects	Cartoons	Serials	Adver- tising	Misc.
July	549	66	64	8	5	0
August	549	59	57	10	1	0
September	389	41	130	2	8	0
October	436	26	51	0	12	0
November	465	69	141	30	5	0
December	425	24	115	0	5	0
1961						
January	366	29	130	0	7	0
February	345	18	28	0	7	0
March	412	88	87	0	2	0
April	361	31	68	0	0	0
May	498	38	57	0	3	0
June	492	94	165	0	6	0
TOTALS	5,287	583	1,093	50	61	0

SUMMARY OF REPORT

Films, Original	1,137			
Films, Duplicate	5,937			
Reels, Original	7,310			
Reels, Duplicate	54,136			
Number of feet, Original		5,826,795		
Number of feet, Duplicate		43,517,460		
Films Approved, Original				1,122
Films Approved, Duplicate				5,923
Films Modified in Part, Original				13
Films Modified in Part, Duplicate				14
Films Denied				2
TOTALS	7,074	61,446	49,344,256	7,074

MARYLAND STATE BOARD OF MOTION PICTURE CENSORS
REPORT OF FILMS EXAMINED

July 1, 1960—June 30, 1961

1960	Films		Reels		No. of Ft. Original	No. of Ft. Duplicate	Films Approved	Films	
	Original	Duplicate	Original	Duplicate				In Part Original	Modified In Part Duplicate
July	95	597	530	4,714	429,908	3,896,679	692	0	0
August	80	594	605	6,187	470,132	4,982,475	676	2	0
September	100	467	651	3,849	506,880	3,085,905	570	0	3
October	92	425	555	4,332	441,771	3,470,595	525	0	8
November	126	582	732	4,452	574,228	3,537,215	710	1	1
December	87	479	663	3,949	545,629	3,142,865	569	1	2
1961									
January	91	440	572	4,281	448,371	3,465,535	532	1	0
February	58	337	349	3,397	280,057	2,700,340	398	3	0
March	99	487	695	4,035	556,488	3,330,143	587	1	0
April	70	390	511	3,499	409,109	2,815,133	460	0	0
May	84	510	621	6,126	537,972	4,821,921	596	2	0
June	140	615	826	5,315	626,250	4,268,654	717	2	0
TOTALS	1,122	5,923	7,310	54,136	5,826,795	43,517,460	7,072	13	14
									2

DEFENDANT'S EXHIBIT No. 3

FORTY-SIXTH ANNUAL REPORT

of the

MOTION PICTURE CENSOR BOARD

MARYLAND



**FISCAL YEAR
1962**

• • • • •

WORK OF THE BOARD

During the Fiscal Year, the Board reviewed 653 original films in addition to 526 re-issued (films that have been reprinted by film companies and returned to the distribution market for exhibition in theatres) and processed 5,504 duplicate prints. There were 494 substitute seals issued to replace seals that had been lost or destroyed. Forty (40) films were modified in part, and three (3) films were rejected in toto.

OPINIONS BY THE ATTORNEY GENERAL

In response to many inquiries from the public, the State Law Department viewed the film "La Dolce Vita", and in summation felt that the film was calculated to be shocking and in some sense irreverent and containing much that might better be left unshown, but found no grounds on which the Board might legally disapprove the film.

The Board requested the State Law Department to advise whether they (the Board) had the right to examine and license each trailer (i.e., excerpts of films to be subsequently shown at the same theatre, also known as "previews") and all duplicates thereof, which are exhibited in Maryland. On October 25, 1961, the State Law Department ruled that under Section 2 of Article 66A, Annotated Code of Maryland, the Board has the right to require all trailers and duplicates thereof to be submitted for censorship.

COURT OPINIONS

On March 23, 1962, the Baltimore City Court substantiated the Board's rejection of the film "The Immoral Mr. Teas", wherein the Board found the film to be obscene, that its calculated purpose to arouse sexual desires, violated Article 66A, Section 6 (a) and (b) of the Annotated Code of Maryland.

On May 11, 1962, the Baltimore City Court reversed the findings of the Motion Picture Censor Board in ordering two sequences to be eliminated from the film "Les Amants" (The Lovers). The Court ruled that the film was not obscene, erotic or pornographic under the Maryland Statute, and could be exhibited in its entirety.

FINANCIAL STATEMENT

The year's total receipts were \$63,686.00. This revenue was derived from fees required by law for the Board's examination of films. After defraying expenses of \$64,146.45, the sum of \$2,738.55 unexpended appropriation was reverted to the Treasury. The all-time sum reverting to the Treasury amounts to \$577,887.69, since the inception of the Board.

INSPECTIONS

During 2,682 visits made to theatres throughout the fiscal year, the Motion Picture Inspectors examined 5,687 films and found 262 infractions of the law, which were corrected without delay. Inspections of all theatres throughout the State are made periodically, to check compliance with the State Motion Picture Censorship Law, and orders issued by the Board.

MARYLAND STATE BOARD OF MOTION PICTURE CENSORS

For the Fiscal Year Ending June 30, 1962

RECEIPTS

(a) Licenses (Original)	\$ 19,192.00
(b) Licenses (Duplicate)	44,000.00
(c) Licenses (Substitute)	494.00
Grand Total	\$ 63,686.00

TOTAL ANNUAL RECEIPTS FOR FORTY-SIX YEAR PERIOD

	<u>Receipts</u>	<u>Expenses</u>	<u>Receipts in Excess of Expenditures</u>
1916 - 1962	\$2,232,664.50	\$1,654,776.81	\$577,887.69
Budget Appropriation July 1, 1961 through June 30, 1962			\$ 66,885.00

DISBURSEMENTS

Operating expenses:

Salaries	\$ 50,046.62
Technical & Special Fees	5,812.50
Communication	1,413.50
Travel	2,544.11
Motor Vehicle Operation & Maintenance ..	478.18
Contractual Services	2,086.86
Materials & Supplies	823.05
Office Equipment-Replacement	714.38
Fixed Charges	<u>227.25</u>

Total Disbursements \$ 64,146.45

Amount Unexpended Appropriations as of June 30, 1962 \$ 2,738.55

MARYLAND STATE BOARD OF MOTION PICTURE CENSORS
CLASSIFICATION OF FILMS
JULY 1, 1961—JUNE 30, 1962

1961	Features	Short Subjects	Cartoons	Serials	Adver- tising	Misc.
July	436	21	77	0	10	0
August	463	45	103	0	5	0
September	493	28	91	2	7	0
October	389	47	62	6	9	0
November	392	56	135	4	8	0
December	367	50	77	4	1	0
1962						
January	421	65	99	16	1	0
February	323	38	105	0	8	0
March	436	27	102	16	4	0
April	361	68	86	4	4	0
May	450	31	48	3	10	0
June	431	49	87	0	2	0
TOTALS	4,962	525	1,072	55	69	0

SUMMARY OF REPORT

Films, Original	1,179			
Films, Duplicate	5,504			
Reels, Original	7,296			
Reels, Duplicate	51,407			
Number of Feet, Original		5,748,339		
Number of Feet, Duplicate		41,461,560		
Films Approved, Original			1,136	
Films Approved, Duplicate			5,494	
Films Modified in Part, Original			40	
Films Modified in Part, Duplicate			10	
Films Denied			3	
TOTALS	6,683	58,703	47,209,899	6,683

[fol. 116]

IN THE CRIMINAL COURT OF BALTIMORE

STATE OF MARYLAND,

—VS.—

RONALD L. FREEDMAN.

Indictment #4273/62

Baltimore, Maryland,
May 24, 1963.

Before HONORABLE ANSELM SODARO, J.

APPEARANCES:

Robert T. Freeze, Esquire on behalf of the State.

Richard Whiteford, Esquire on behalf of the Defendant.

The Clerk: Ronald L. Freedman. Mr. Whiteford, Mr. Bilgrey.

Mr. Whiteford: Good morning, Your Honor.

The Court: This case was concluded on the motion for [fol. 117] a judgment of acquittal at the termination of the entire case, that is correct, is it not?

Mr. Whiteford: Yes, sir.

DENIAL OF MOTION FOR JUDGMENT OF ACQUITTAL

The Court: I will deny the motion. Do you have any additional testimony?

Mr. Whiteford: No, sir.

The Court: Well, the verdict is guilty. I am filing a short memorandum which will be in the file, there is no purpose in reading it now, I will file it in the original papers and let you have a copy of it.

Mr. Whiteford: Yes, sir.

The Court: Is he ready for sentence?

Mr. Whiteford: We are, sir.

SENTENCE

The Court: The fine is \$25 and costs.

Mr. Whiteford: Thank you, sir.

[fol. 118]

IN THE CRIMINAL COURT OF BALTIMORE

STATE OF MARYLAND,

VS.

RONALD L. FREEDMAN.

DOCKET ENTRIES

May 24, 1963—Verdict: Guilty.

May 24, 1963—Judgment: Fined \$25.00 and Costs.

[fol. 119]

IN THE CRIMINAL COURT OF BALTIMORE

STATE OF MARYLAND,

VS.

RONALD FREEDMAN.

Ind. #4273/1962

MEMORANDUM OPINION—May 24, 1963

SODARO, J.

The defendant is charged under indictment with violation of Article 66A Section 2 of the Annotated Code of Maryland, which reads as follows:

"Moving Pictures.

Sec. 2. Unlawful to show any but approved and licensed film.

It shall be unlawful to sell, lease, lend, exhibit, or use any motion picture film or view in the State of Maryland unless the said film or view has been sub-

mitted by the exchange, owner or lessee of the film, or view and duly approved and licensed by the Maryland State Board of Censors, hereinafter in this article called the Board."

The facts are not in dispute in that the defendant on November 1, 1962, did publicly show a certain motion picture entitled "Revenge at Daybreak", at the Rex Theatre in Baltimore City, without having previously submitted the film for licensing and approval by the State Board of Censors.

The defendant contends that Article 66A, upon its face, violates the First and Fourteenth Amendments of the United States Constitution in that it imposes an invalid infringement upon the exercise of the right of free speech and press; that it is invalid as contrary to the Due Process Clause of the Fourteenth Amendment, specifically in that the standards pursuant to which speech is abridged, set forth in Section 6 of said Article, are vague and that the standards fail to advise the defendant of those forms of speech which the State purportedly proscribes; that Article 66A, upon its face, violates Article 40 of the Maryland Declaration of Rights and is specifically contrary to the Due Process Clause of Article 23 of the Declaration [fol. 120] of Rights of Maryland in that the standards contained in Section 6 of said Article, which permit the depriving of defendant's life, liberty or property, are couched in vague language which fail to apprise the defendant of the conduct the standard seeks to proscribe; that said Article is invalid as contrary to, and imposes an unlawful infringement upon the Interstate Commerce Clause of the United States Constitution, and specifically that it imposes a tax and/or license fee upon the right of the freedom of speech and press; that it is invalid and void in that it is an unlawful and illegal delegation of legislative authority to an administrative agency.

These grounds of attack collectively simply challenge the Censor's basic authority and do not go to any statutory standards or procedural requirements as to the submission of the film. It is not the contention of the State that the film in question violates any of the standards set out in the Statute.

After consideration of argument of counsel and briefs which were filed by both sides, I have concluded that Article 66A, and in particular Section 2 thereof which is the basis of the charge, is valid and constitutional. Although this challenged Section imposes a previous restraint, the ambit of constitutional protection does not include complete and absolute freedom to exhibit any and every kind of motion picture and this challenged provision, requiring the submission of films prior to their public exhibition, is not, on the grounds set forth by the Defendant, void on its face.

The defendant's broadside attack on the constitutionality of this Section is similar to that made in the case of Times Film Corporation v. City of Chicago, Et Al., 365 U.S. 43, in which Mr. Justice Clark, speaking for the majority court, said "Certainly, petitioner's broadside attack does not warrant, nor could it justify on the record here, our saying that—aside from any consideration of the other exceptional cases mentioned in our decisions—the State is stripped of all constitutional power to prevent, in the [fol. 121] most effective fashion, the utterance of this class of speech. It is not for this court to limit the State in its selection of the remedy it deems most effective to cope with such a problem, absent, of course, a showing of unreasonable strictures on individual liberty resulting from its application in particular circumstances."

Consequently, the Defendant's Motion for Judgment of Acquittal is hereby denied.

Anselm Sodaro, Judge.

May 24, 1963

[fol. 122] Clerk's Certificate to foregoing transcript
(omitted in printing).

[fol. 123]

IN THE COURT OF APPEALS OF MARYLAND

No. 144

September Term, 1963

RONALD L. FREEDMAN

v.

STATE OF MARYLAND

Henderson, Hammond, Prescott, Marbury, Sybert, Justices.

OPINION—Filed: February 10, 1964

[fol. 124] Sybert, J.

In order to test the constitutionality of the Maryland motion picture censorship statute, the appellant invited arrest by exhibiting the motion picture film "Revenge at Daybreak" at a theatre in Baltimore City without first having submitted the film to the Maryland State Board of Motion Picture Censors for approval and licensing, as required by Code (1957), Art. 66A, Sec. 2.¹ He was indicted and tried in the Criminal Court of Baltimore for violation of Sec. 2, and convicted after his timely motions for judgment of acquittal were denied. He now appeals.

The appellant has attempted, both in the court below and on this appeal, to attack the constitutionality of Art. 66A in its entirety, even though he was tried and convicted only for violation of Sec. 2. The principal contention is that the statute is void on its face as an unconstitutional infringement upon free speech and press violative of the First Amendment to the United States Constitution (made

¹ "§2. It shall be unlawful to sell, lease, lend, exhibit or use any motion picture film or view in the State of Maryland unless the said film or view has been submitted by the exchange, owner or lessee of the film or view and duly approved and licensed by the Maryland State Board of Censors, hereinafter in this article called the Board."

applicable to the States under the Fourteenth Amendment) and of Art. 40 of the Maryland Declaration of Rights. The appellant then argues that in the defense of a criminal prosecution under Sec. 2 of Art. 66A he is entitled to challenge the constitutionality of the entire statute "since he is charged with a violation under the Act." Acting upon that premise, he proceeds to attack separately what he asserts are constitutional infirmities of certain features of the Act. His claims are that the Act fails to provide adequate [fol. 125] quate procedural safeguards (although he noted that Sec. 19 of Art. 66A affords an appeal to the Baltimore City Court and thence to this Court); that the standards established by Sec. 6² of the Act are vague and hence invalid as construed and applied; that the statute deprives him of equal protection of the law in that newsreels and noncommercial exhibitors such as educational, charitable,

²"§6. (a) *Board to examine, approve or disapprove films.*—The Board shall examine or supervise the examination of all films or views to be exhibited or used in the State of Maryland and shall approve and license such films or views which are moral and proper, and shall disapprove such as are obscene, or such as tend, in the judgment of the Board, to debase or corrupt morals or incite to crimes. • • •

"(b) *What films considered obscene.*—For the purpose of this article, a motion picture film or view shall be considered to be obscene if, when considered as a whole, its calculated purpose or dominant effect is substantially to arouse sexual desires, and if the probability of this effect is so great as to outweigh whatever other merits the film may possess.

"(c) *What films tend to debase or corrupt morals.*—For the purposes of this article, a motion picture film or view shall be considered to be of such a character that its exhibition would tend to debase or corrupt morals if its dominant purpose or effect is erotic or pornographic; or it portrays acts of sexual immorality, lust or lewdness, or if it expressly or impliedly presents such acts as desirable, acceptable or proper patterns of behavior.

"(d) *What films tend to incite to crime.*—For the purposes of this article, a motion picture film or view shall be considered of such a character that its exhibition would tend to incite to crime if the theme or the manner of its presentation presents the commission of criminal acts or contempt for law as constituting profitable, desirable, acceptable, respectable or commonly accepted behavior, or if it advocates or teaches the use of, or the methods of use of, narcotics or habit-forming drugs."

fraternal and religious organizations are excluded from the operation of the Act; and that the fee charged for the inspection and licensing of a film constitutes an invalid tax upon the exercise of freedom of speech.

[fol. 126] The State maintained below and here that the statute is not void on its face, and that since the appellant did not submit his film to the Board for approval and licensing he lacks standing to challenge any provision or requirement of Art. 66A, except the provisions of Sec. 2, for violation of which he was convicted. The trial court agreed with the position of the State. Parenthetically, it is noted that neither the appellant nor the State even suggests that the film "Revenge at Daybreak" would violate any of the standards set out in the statute, and the State conceded that it would have been approved had it been submitted for licensing.

We shall first consider the appellant's main attack—that the Maryland statute is void on its face as an unconstitutional prior restraint imposed upon the freedoms of speech and press protected against State action by the First and Fourteenth Amendments and by Art. 40 of the Maryland Declaration of Rights.

The Supreme Court of the United States, in *Joseph Burstyn, Inc. v. Wilson*, 343 U. S. 495, 96 L.Ed. 1098 (1952), held that motion pictures are within the ambit of protection which the First Amendment, through the Fourteenth, affords to speech and the press, and struck down the use of "sacrilegious" as a permissible censorship standard. However, the Court intimated that some form of censorship might be permissible when it said (at p. 502 of 343 U.S.): "To hold that liberty of expression by means of motion pictures is guaranteed by the First and Fourteenth Amendments, however, is not the end of our problem. It does not follow that the Constitution requires absolute [fol. 127] freedom to exhibit every motion picture of every kind at all times and all places. That much is evident from the series of decisions of this Court with respect to other media of communication of ideas." The Court further stated (*ibid.*) in considering the argument that motion pictures possess a greater capacity for evil, particularly among

the youth of a community, than other modes of expression: "If there be capacity for evil it may be relevant in determining the permissible scope of community control, but it does not authorize substantially unbridled censorship such as we have here." Subsequent to *Burstyn*, a number of film censorship cases reached the Supreme Court which involved questions of standards. The films in those cases had all been submitted to the appropriate authorities and permits for their exhibition were refused because of their content. Thus those cases are not apposite here and will not be reviewed.

In 1961, in *Times Film Corp. v. Chicago*, 365 U.S. 43, 5 L.Ed. 2d 403, the question whether or not the constitutional guaranty of freedom of speech and of the press was violated by prior censorship was placed squarely before the Supreme Court. The appellant in that case, a motion picture exhibitor, challenged the validity of an ordinance of the City of Chicago which, as a prerequisite to public exhibition, required the submission of films to a censor. The exhibitor applied for a permit and tendered the license fee, as required by the ordinance, but refused to submit the film for examination. The permit was denied solely because of the refusal to submit the film. The exhibitor sought injunctive relief, challenging the ordinance on the ground [fol. 128] that the First Amendment guaranties were violated by the prior censorship requirement, thus rendering the ordinance void on its face. The Supreme Court found that the attack was an attempt to have the Court hold that the public exhibition of motion pictures must be permitted under any circumstances, and that previous restraint cannot be justified regardless of the capacity of motion pictures for evil, or the extent thereof. In rejecting that contention, the Court said (pp. 49-50 of 365 U.S.):

"With this we cannot agree. We recognize in *Burstyn*, *supra*, that 'capacity for evil . . . may be relevant in determining the permissible scope of community control,' at p. 502, and that motion pictures were not 'necessarily subject to the precise rules governing any other particular method of expression. Each method,' we said, 'tends to present its own pecul-

iar problems.' At p. 503. Certainly petitioner's broadside attack does not warrant, nor could it justify on the record here, our saying that—aside from any consideration of the other 'exceptional cases' mentioned in our decisions—the State is stripped of all constitutional power to prevent in the most effective fashion, the utterance of this class of speech. It is not for this Court to limit the State in its selection of the remedy it deems most effective to cope with such a problem, *absent, of course, a showing of unreasonable strictures on individual liberty resulting from its application in particular circumstances.*" (Emphasis supplied.)

In affirming the dismissal of the exhibitor's complaint, the Supreme Court held that the requirement of Chicago's ordinance for submission of films prior to their public exhibition was not void on its face as an invasion of the constitutional guaranties.

The Supreme Court's refusal to strike down all prior censorship of motion pictures was recognized and restated last year in *Bantam Books Inc. v. Sullivan*, 372 U.S. 58, 9 L.Ed. 2d 584 (1963). In that case the court found unconstitutional a Rhode Island agency formed to screen books and magazines and to recommend the prosecution of violators of appropriate statutes, on the ground that the Act creating the agency did not require proper judicial superintendence. However, the court said, in Footnote 10 of *Bantam* (at p. 70 of 372 U.S.):

"Nothing in the Court's opinion in *Times Film Corp. v. Chicago*, 365 U.S. 43, is inconsistent with the Court's traditional attitude of disfavor toward prior restraints of expression. The only question tendered to the Court in that case was whether a prior restraint was necessarily unconstitutional *under all circumstances*. In declining to hold prior restraints unconstitutional *per se*, the Court did not uphold the constitutionality of any specific such restraint. Furthermore, the holding was expressly confined to motion pictures." (Emphasis by Court.)

We conclude that on the authority of the *Times Film* case, *supra*, the Maryland censorship law must be held to be not void on its face as violative of the freedoms protected against State action by the First and Fourteenth Amendments. However, the appellant also argues that the statute is in conflict with Art. 40 of the Maryland Declaration of Rights, which provides:

"That the liberty of the press ought to be inviolably preserved; that every citizen of the State ought to be allowed to speak, write and publish his sentiments on all subjects, being responsible for the abuse of that privilege."

We find no merit in this argument. The right to speak and print, protected by Art. 40, is not absolute. This Court has held that the liberty of the press does not include the privilege of taking advantage of the incarceration of a person accused of crime to photograph his face and figure against his will. *Ex Parte Sturm*, 152 Md. 114, 120, 136 Atl. 312 (1927). The guaranty of freedom of speech and press ordained in Art. 40 would appear to be, in legal [fol. 130] effect, substantially similar to that enunciated in the First Amendment, and it is significant that Art. 40 has been treated by this Court as in *pari materia* with the First Amendment. See, for example, *Police Comm'r v. Siegel, etc., Inc.*, 223 Md. 110, 128, 162 A.2d 727 (1960); *Baltimore v. A. S. Abell Co.*, 218 Md. 273, 289, 145 A.2d 111 (1958). We therefore see no reason why Art. 40 should be interpreted differently from the First Amendment.

We think the State is correct in its contention that since the appellant chose to mount his attack on the constitutionality of motion picture censorship in Maryland by refusing to submit his film to the Board as required by Sec. 2 of Art. 66A (for which alone he was indicted), he has restricted himself to an attack on that section alone, and lacks standing to challenge any of the other provisions (or alleged shortcomings) of the statute. The appellant's contention that the entire Act is subject to challenge when the State seeks a criminal conviction for failure to comply with a single provision of it is untenable. The indictment

did not involve procedures or standards under other sections of the Act, or any of the other matters sought to be raised by the appellant, and thus there was no ripe and justiciable issue as to such matters before the trial court, and there is none before us. Other avenues—such as an action for injunctive or declaratory relief—are open to the appellant for the determination of such issues when he is faced with invasion of his rights.

[fol. 131] In *Hammond v. Lancaster*, 194 Md. 462, 71 A.2d 474 (1950), Judge Henderson, for the Court, reviewed the authorities dealing with the matter of standing to seek a judicial determination of a constitutional question in advance of the necessity for its decision. He pointed out that the Supreme Court, in *Federation of Labor v. McAdory*, 325 U.S. 450, 89 L.Ed. 1725 (1945), dismissed the writ of *certiorari* which it had issued in a case brought in the Alabama State court against enforcement officers for a declaratory judgment adjudicating the constitutionality of an Alabama Act which, it was contended, violated rights of free speech, due process and equal protection, and was vague and indefinite, and he quoted Chief Justice Stone as saying, “ . . . this Court has felt bound to delay passing on ‘the constitutionality of all the separate phases of a comprehensive statute until faced with cases involving particular provisions as specifically applied to persons who claim to be injured.’ ” To the same effect are *Hitchcock v. Kroman*, 196 Md. 351, 76 A.2d 582 (1950); *Tanner v. McKeldin*, 202 Md. 569, 580, 97 A.2d 449 (1953); *Givner v. Cohen*, 208 Md. 23, 37, 116 A.2d 357 (1955), and *Dutton v. Tawes*, 225 Md. 484, 171 A.2d 688 (1961), app. dism. 368 U.S. 345, 7 L.Ed. 2d 342, in the last of which cases Judge Hammond, for the Court, said (at p. 501 of 225 Md.): “In the view we take of the case, however, we think appellants are not entitled to have a declaration as to the constitutionality of the compact in operation. They have not shown that they are engaged in or faced with actual controversy, or that the issues are ripe and justiciable, so [fol. 132] as to be able to call upon the courts to exercise the declaratory process. . . . ” For the latest case in which this Court has had occasion to consider the question of standing to raise issues, see *Citizens Comm. v. Anne*

Arundel Co., No. 135, this Term, — Md. —, — A.2d — (1964).

The appellant relies strongly upon the cases of *Staub v. Baxley*, 355 U.S. 313, 2 L.Ed. 2d 302 (1958), and *Lovell v. Griffin*, 303 U.S. 444, 82 L.Ed. 949 (1938), to support his claim that he has standing to attack provisions of the Act other than Sec. 2. However, these cases are distinguishable. In each, the Supreme Court expressly found that the ordinance involved was void *on its face*, whereas the Chicago ordinance, substantially similar to the Maryland statute, was held not to be void on its face in *Times Film, supra*.

We hold that the requirement of Art. 66A, Sec. 2, that films be submitted to the Censor Board for approval and licensing before public exhibition, is not void on its face and is valid and enforceable. We also hold that, in this case, the appellant had no standing to question other portions of the statute.

Judgment Affirmed; Appellant to Pay Costs.

[fol. 133]

IN THE COURT OF APPEALS OF MARYLAND

No. 144—September Term, 1963

Ind. 4273, Docket 1962

RONALD L. FREEDMAN,

v.

STATE OF MARYLAND.

Appeal from the Criminal Court of Baltimore.

Filed: July 11, 1963.

February 10, 1964: Judgment affirmed; appellant to pay costs. Opinion by Sybert, J.

MANDATE**Statement of Costs:****In Circuit Court:**

Record —
 Stenographer's Costs \$33.00

In Court of Appeals:

Filing Record on Appeal	\$ 20.00
Printing Brief for Appellant	685.68
Reply Brief	
Portion of Record Extract—Appellant	
Appearance Fee—Appellant	10.00
Printing Brief for Appellee	215.00
Portion of Record Extract—Appellee	
Appearance Fee—Appellee	10.00

State of Maryland, Set:

I do hereby certify that the foregoing is truly taken from the record and proceedings of the said Court of Appeals.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Appeals, this eleventh day of March A. D. 1964.

J. Lloyd Young, Clerk of the Court of Appeals in Maryland.

• (Seal)

Costs shown on this Mandate are to be settled between counsel and NOT THROUGH THIS OFFICE

[fol. 139]

[File endorsement omitted]

IN THE CRIMINAL COURT OF BALTIMORE CITY

Indictment #4273

September Term, 1962

STATE OF MARYLAND, Appellee,

VS.

RONALD FREEDMAN, Appellant.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE
UNITED STATES—Filed May 1, 1964

I. Notice is hereby given that Ronald Freedman, the Appellant named above, hereby appeals to the Supreme Court of the United States from the final judgment of the Court of Appeals of Maryland affirming judgment of conviction entered on February 10, 1964.

This Appeal is taken pursuant to 28 U.S.C.A., Section 1257 (2).

Appellant was convicted of the crime of exhibiting a motion picture without submitting it to the Maryland Board of Motion Picture Censors for license and approval, in violation of Article 66A, Section 2 of the Annotated Code of Maryland 1957 Volume as amended, and was fined the sum of Twenty-Five (\$25.00) Dollars, which said sum has been paid.

II. The Clerk will please prepare a transcript of the record in this case for transmission to the Clerk of the Supreme Court of the United States, and should in such transcript include the following:

1. Mandate of the Court of Appeals of Maryland No. 144, September Term, 1963.
2. The Opinion of the Court of Appeals of Maryland No. 144, September Term, 1963, Opinion by Sybert, J.

[fol. 140] 3. Indictment, Criminal Court of Baltimore City, No. 4273, September Term, 1962.

4. Stipulation of Facts, i.e. State exhibit No. 1.
5. License Agreement, i.e. State exhibit No. 1A.
6. Rules of the Maryland Board of Motion Picture Censors, i.e. Defendant's exhibit No. 1.
7. 46th Annual Report of Motion Picture Censor Board, i.e. Defendant's exhibit No. 3.
8. 45th Annual Report of the Motion Picture Censor Board, i.e. Defendant's exhibit No. 4.
9. 44th Annual Report of the Motion Picture Censor Board, i.e. Defendant's exhibit No. 5.
10. Transcript of the proceedings in the case.
11. Motion for judgment by acquittal.
12. Memorandum Opinion filed in the lower court by Judge Sodaro.

III. The following questions are presented by this Appeal:

1. Has Maryland, in imposing a criminal penalty on an act of free expression of a concededly legitimate matter, directly transgressed the First and Fourteenth Amendments of the United States Constitution?

2. Has the State of Maryland used its criminal processes in an attempt to coerce the appellant to purchase from the State the privilege of publicly exhibiting a concededly permissible motion picture, by seeking to impose a tax or license fee upon the appellant's exercise of his constitutional rights of free expression in contravention of the First and Fourteenth Amendments of the United States Constitution?

[fol. 141] 3. In seeking to use its criminal processes to coerce appellant, to submit a concededly permissible motion picture to the Maryland Board of Motion Picture Censors for approval, which picture, the State acknowledges, that Board could not have lawfully withheld, was not Mary-

land seeking to delay appellant in the immediate exercise of his present right of free expression in contravention of the First and Fourteenth Amendments?

Felix J. Bilgrey, 144 West 57th Street, New York 19,
New York.

Richard C. Whiteford, 301 North Charles Street,
Baltimore, Maryland 21201, PLaza 2-0987,

Attorneys for Appellant.

Certificate of Service (omitted in printing).

[fol. 142]

SUPREME COURT OF THE UNITED STATES

No. 1087—October Term, 1963

RONALD L. FREEDMAN, Appellant,

vs.

MARYLAND.

Appeal from the Court of Appeals of the State of Maryland.

ORDER NOTING PROBABLE JURISDICTION—June 22, 1964

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.